



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

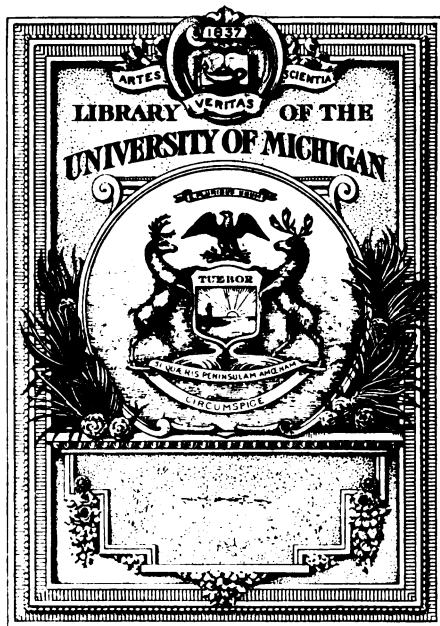
Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

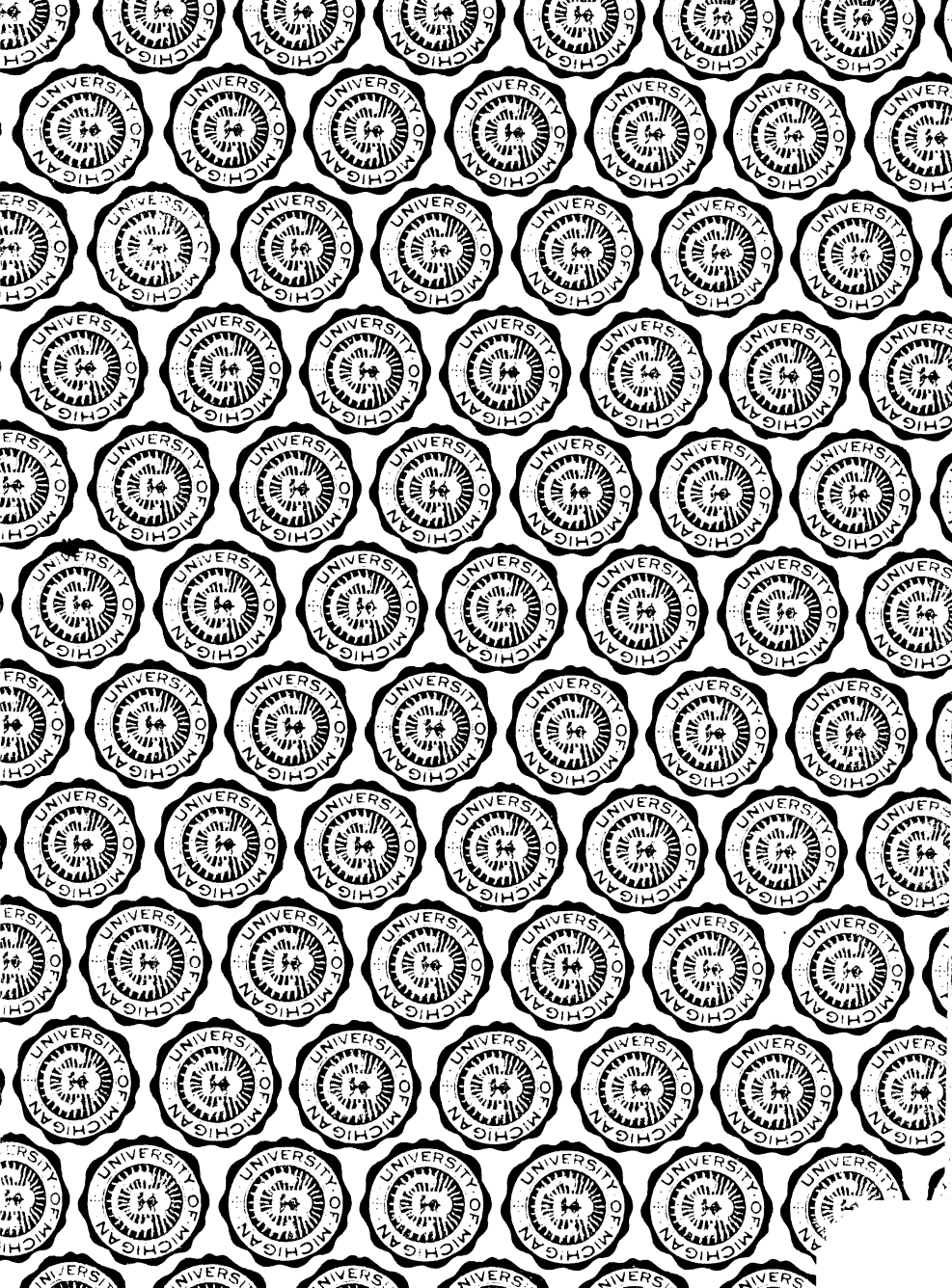
We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>





DA

463

1689

A.25

AGREEMENT

Betwixt the

Present and the Former Government ♣

Or, a DISCOURSE of *This Monarchy*,
whether *Elective* or *Hereditary*?

Also, of *Abdication, Vacancy, Interregnum, Present Possession of the Crown*, and the *Reputation of the Church of England*.

With an *Answer to Objections*, thence arising, against taking the *new Oath of Allegiance*.

For the Satisfaction of the *Scrupulous*.

By a Divine of the *Church of England*, the Author of a little Tract, entituled, *Obedience due to the Present King*, notwithstanding *our Oaths to the Former*.

L I C E N S ' D,

Sept. 24.
1689.

J. Fraser.

L O N D O N,

Printed for *Avnsham Churchill* at the Black Swan in *Avenary-Lane*, near *Pater-noster-Row*, 1689.

1111 E 1111

1111 E 1111

1111 E 1111

1111 E 1111

1111 E 1111

942.06

A277

1111 E 1111

1111 E 1111

1111 E 1111

1111 E 1111

1111 E 1111

1111 E 1111

1111 E 1111

1111 E 1111

1111 E 1111

THE CONTENTS OF THE CHAPTERS.

CHAPTER I.

AN Introduction grounded on a general Maxim,
That unnecessary Changes in Governments are to
be avoided as dangerous. page 3.

CHAPTER II.

The chief Maxims insisted upon as prejudiced by the
late Settlement. P. 11.

CHAPTER III.

The Government, whether Elective or Hereditary,
and how. P. 12.

CHAPTER IV.

Of Vacancy, and the supposed Interregnum thereupon,
by the late King's Abdication. P. 31.

CHAPTER. RH.

The Contents.

CH A P. V.
Of A B D I C A T I O N. P. 32.

CH A P. VI.
Of Vacancy and Interregnum. P. 37.

CH A P. VII.
Of the Convention, and how it became a Parliament. P. 42.

CH A P. VIII.
Arguing from the Possession of the Crown. P. 51.

CH A P. IX.
Whether Kings can make Laws, limiting the Crown. P. 58.

CH A P. X.
The Honour of the Church of England, no just Objection against our taking the new Oath. P. 60.

The APPENDIX: The Objection from the Word Allegiance considered. P. 66.

P O S T S C R I P T. P. 75.

S A H O

Printed by J. Sturges, at the Press of the University of London.

1714

S A H O

CH A P.

TO THE

READER.

SCruple is an Ague of the Mind, it sometimes shakes it, and sometimes beats and disturbs the Brain: If the Matter be unknown to the Patient and to Doctors, we are not certain of the Cure; and the less, if the Stomach be untoward, and the Appetite averse to Medicine: in such a Case, various Methods used to be tried, and Remedies prescribed; but through Ignorance of the Cause, or some latent Obstruction, Skill it self, a long time is thrown away; at length perhaps a vulgar Medicine, given at a venture, hits the Distemper, and works the Cure. After many learned Doctors charitable Endeavours to deob-

B

struct

struct and ease some good Mens Minds, that are shaken with Scruples about the new Oath of Allegiance, hitherto in vain, (if it be yet in vain); though I cannot boast of my Skill, I make bold to try a new Practice upon them. And I hope my good Reader bath the like Reverence and Value, for the worthy Persons that yet labour under (may I call it) the Disease, and the same Zeal and Affection for the Health and Quiet of the Body Politick, that I myself have, and doth join with me, while I do heartily (that which I fear Physicians seldom do) pray over my Patients for a Blessing from the Great Physician.

(3)

C H A P. I.

An Introduction grounded in a general Maxim.

The general Maxim,

Unnecessary Changes in Government are to be avoided as dangerous.

UPON any great *Revolution* it seems much the Concern of the New State, so to settle the Government, as may offer least matter or occasion of Discontent to the People, and consequently to make as little Alteration in the former Maxims and Customs, (that is, in the old Constitution) as is possible, lest the old *Leaven* should work again to the prejudice of the new Establishment.

We may observe in our own History, that such public Grievances as from time to time have been objected by the People to the disquieting, and sometimes hazarding of the Government, have generally been aggravated with the charge of *Innovation*, as being contrary to our ancient Liberties, Rights and Customs; and for some Ages in Instances infringing *Magna Charta*, that great Record of the Subjects Privileges, and Codex of our ancient and common Law, in which much of our old and happy Constitution consists; indeed any Alteration in our Constitution seems to shake the Foundation, and frightens the People like an Earthquake.

This *Maxim* is commended by three great and well-known *Examples*.

1. Our *Saviour's*.

This Caution was sanctified after a marvellous manner by the Wisdom of God in our great *Exemplar*: Our blessed Saviour, we know, was sent into the World to put the Church into a *new* frame; now in his so doing, did he reject all that was *old*, or leave out any thing that might be any way serviceable in the *new*? Is it not remarkable, that he did resume and make use of as many of the old Materials as could possibly be accommodated to the Edification of the Gospel-Church? Did he not take both the Sacraments, did he not collect the very *Petitions* of his Prayer out of the former Usage, and alude much in the new Government to be established to that which he found in the old? Did he not preach and expound upon the Law of *Moses*, and the ancient Prophets, and appeal for his Defence and Justification to their own Books? Indeed he seems to have left out nothing of the old Dispensation but what was inconsistent with the *new*, namely, that which was *typical* and expired in the Truth, and that which was purely *judicial*, and therefore ceased with the temporal Government of the Jews, which our Saviour was not then come to take upon him.

Now, was not all this Accommodation of our Saviour to *Moses* wisely as well as graciously contrived, that the People, for whose sakes he was first sent, might not be offended, or startle and flie from him upon the Scandal of Innovation?

Yea, so tender was our Saviour of them in this Point, that during his whole Life, both he himself, and his Disciples

tibles by his Commission, address'd only to the Jewish Nation; that the greatest Scandal by the *Call of the Gentiles* might be avoided, and they might still appear to be God's peculiar People, while there was any the least hopes of them.

According to their Lord's method and example, we afterwards find his *Apostles* in a great Council, held and decreed it as a necessary thing for some time to retain and to practise some *legal Ceremonies*, even after they were all really abolish'd in the Death of Christ, that if possible they might thus gain, that is, reconcile the stubborn People to the new Establishment, or at least, leave them without excuse.

Afterwards, the fear that possessed the Christian and believing Jews of too great Alteration to be made by the Gospel, occasion'd that sober Advice we read of in *Acts 21. 20, 21, 23, 24.* of the Church to St. Paul, *Thou feest, Brother, how many thousands of Jews there are which believe, and they are all zealous of the Law. And they are inform'd of thee, that thou teachest all the Jews which are amongst the Gentiles, to forsake Moses, saying, That they ought not to circumcise their Children, neither to walk after the Customs. Do therefore this that we say unto thee, that all may know that the Information against thee is nothing, i. e. of no moment; but that thou thy self walkest orderly, and keepest the Law.*

2. Of the Church of England in the Reformation.

Upon this ground some have thought it a Point of commendable Prudence in the Church of *England*, that her *Reformation* at first, proceeded with so much Moderation, and no greater Alteration, either in the Service or Government of this Church; whereby she quieted the

the Minors, and drew into her Communion so many of the moderate *Papists*, both in the Reign of *Edw. 6.* and in the beginning of *Q. Elizabeth's*; and whereby, thro' the wonderful Mercy of God, she hath been so long preserved, even in the midst of her Enemies on both sides, *Moderata durant.* And since that you have her candid Apology to this purpose in these words: 'Accordingly as we find (saith her Preface before the Liturgy) that in the Reigns of several Princes since the Reformation, the Church upon just and weighty considerations hath yielded to make such Alterations in some particulars; as in their respective times were thought convenient; yet so, as that the main Body and Essentials of it (as well in the chief Materials, as in the Frame and Order thereof) have still continued the same unto this day.

And we may remember, that when some furious Zealots for Popery made a *Commotion* and Rebellion in the time of King *Edward 6.* their pretence was, that there were great and intolerable *Alterations* in Religion; and that in their Wisdom, the King and his Council thought it a proper course to allay their Hears, and to pacify and reduce them to Obedience, so let them know how small and few the Alterations complained of were; and that their Service before in *Latin* was now made *English*, that they might understand it.

The Reformation in England was carried on without Affectation of Novelty, though it justly abandon'd the former Superstitions and Idolatry.

3. The Example of William called the Conqueror.

This like Policy is observable in *William the first*: for though the Success of his Arms, carried the Colours of a Conqueror; yet he seem'd unwilling to trust wholly to that

that Title he brook not indeed, but endeavour'd too, that things might go back as they could, and settle more firmly upon the old Basis. He therefore added to, or rather seconded his *Sword* with a Pretence of Right to the Crown; *Jure Hereditario vel Testamentario*; and then, afterwards, they say, he proceeded to accommodate the Administration of his Government to the *Humours* of the *English People*, and the ancient Rights and Customs; I mean so, as the time and present State of things would give way: so that whatever his Title was, he accounted the Satisfaction of his People the best Security to his quiet Government. Certainly something he did to this purpose, since we find it disputed by some learned Men, whether this *William the first*, was King by Conquest or Compact. *Petit, Brady, and others.*

*Vid. Crm.
Ecl. Litti.
Seld. 171.
Fortesc.
de Leg.*

If the former *Maxim* be allowed, I may have leave to apply it to our present Establishment, in two *Inferences*.

First, Seeing, as we have heard, upon such Revolution, a departing from the former Constitution (beyond what is necessary in the very reason of the change) is to be avoided as unsafe or dangerous; we hence seem to owe that *Charity*, yea that *Justice* and that *Honour* to those great and wise Instruments in our late Revolution, as to presume they have done it with *Prudence* agreeable to that great *Maxim*; that is, that at least they intended not therein to depart farther from our former State, or to alter any of our allowed *Maxims* or *Customs*, that lie at the bottom of our ancient Constitution, as our *Common Law*; I mean, beyond such Necessity, or beyond what hath been declared by the King and Parliament.

For

For if any thing contrary or dissentant to our Rule was discours'd in some *previous* Debates before the Settlement was made, and all such Debates were determin'd in the Law; I say, if any such things then happen'd, they ought not now to be remembered or mention'd as other than the motion of particular and private Persons; and by no Rule can they be thought to pass into, or any way affect the *Publique State*, as 'tis now settled by Laws exclusive of them.

Again, If any thing should yet be thought doubtful in the Laws or Method of our present Establishment, methinks by the help of the same Rule, all such Doubts may be speedily resolv'd; I mean by an Interpretation favourable of our *former State*.

Especially if it be seriously weigh'd, how far such a sense may contribute to the Quiet of the Minds of a Multitude of Men among us, that perhaps are too fond of old, and averse to new things.

But principally, for the saving of the Wisdom and Honour of our Governors; and the better securing the Government, upon a *tried Basis*; and the more firmly rivetting it in the Affections and Satisfactions of the Generality of the Kingdom.

This is considerable, when Unanimity and Unity by such Satisfaction, cannot but be thought at least expedient for our common Preservation from the subtle Designs and threatening Attempts of our Enemies.

Pardon me if I make bold to demand, why the *general Sense* of Publique Danger by means of the Offence so many take from the disagreeableness of too strict an Interpretation of some doubtful Words and Practices, touching our present Settlement from our former; why may not, I say, so general a Sense and Fear in the People, who were *represented* in the Settlement, be modestly

deftly thought to have fome Right to reconcile fuch Doubts (if fuch are left and not fully cleared by our Law-Makers) to a Senfe more agreeable to our former Conftitution, and as near as may be.

At leaft, where the Law is not exprefs, it cannot in reafon be interpreted by private Perfons to fuch a fenfe as is counter to general Satisfaction, and the Publique Safety, both of the King and Kingdom; and this we have heard is hazarded by forfaking the old beyond neceffity; and laying too much Streff upon a new Foundation. We ought to be wary of wrefting words or things that feem doubtful, efpecially about Government, to fuch ill *Confequences*, as the cherifhing Faction, the Difurbance of Loyalty, the Reproach of our Rulers, the Scandal of the Law, and the unfetling of the new Eftablifhment, wherein all our civil and religious Interests are undoubtedly concern'd.

Secondly, From the Premifes I muft infer, that an *Essay* to reconcile our prefent State with the former, is at leaft *pardonable*, if not reasonable and expedient, not to fay neceffary.

Here I am incouraged to lay the ground of my *Apolo- gy*, for this bold Adventure, and I hope no peaceable or good Man will be offended, much lefs any of our *Rulers* be provoked, with a modest and well-meant Endeavour to prevent much harm, and to do a great deal of good in my opinion. If I am miftaken, *humanum est*; but I am fure I intend well, and purfue a good Intention *fincerely* according to my own Apprehenfion; This fatisfies my felf, and methinks it fhould offend no body.

But I muft fpeak plain; For if *unnecessary* Alterations in the Frame of Government be indeed dangerous, and

we find an evil Surmise and groundless Suspicion hereof with respect to our late Revolution, already fermenting among us, and spreading the sowness of Dissatisfaction, Discontent, and (I fear) Faction, over too great a part of the Nation, and prevailing so far, as to dishearten our Friends, to animate our Foes, to increase our Fears, to continue our Troubles, and almost shake the Establishment.

If matters are thus with us, I must have leave to say that a Man can hardly do better Service to the *Publique* at this season, than by endeavouring to remove such Popular Mistakes about the Method of our present Settlement, and the nature of the Government, as seem to have such malevolent Influences, and unhappy Effects.

Now I conceive this is to be done in a good measure, by shewing that the Alterations from our *former* State made in the present Government, are not so great or many as our discontented Men imagine, and our Enemies suggest. But if it be made evident, that in a fair and charitable *Construction* of things, we stand firm upon the same Basis we ever did; and that the Constitution of the Kingdom founded in our *ancient Maxims and Customs*, with respect to our Government, is not alter'd or touch'd by the late Revolution; I say, if this can be effected, I am apt to think many doubting and *scrupulous* Persons among us, may be satisfied, and happily reconciled to a better opinion of the present Government, and a more cheerful Submission to it.

If I knew any better Argument to justify our *Rulers*, to vindicate the *Government*, to establish the Kingdom in Peace and Safety, and to defeat the Designs and Forces of our *Enemies (who live and are mighty)* than this before us, I would certainly use it the best I could; but I have no better, therefore I crave Acceptance of this my *Apology*, and Leave to adventure upon my Task.

C H A P.

CHAP. II.

The Chief Maxims insisted upon as prejudiced by the late Settlement.

IT may run in the Minds of some scrupulous Persons, that there are old *Maxims* that lie at the Root or *Foundation* of the Kingdom of England; and that these are destroyed, or subverted by the new Model; and consequently the Constitution of the Government is quite alter'd.

Those old Maxims may be thought to be such as these.

1. That the Government in England is *Hereditary*.
2. That it admits not of an *Interregnum*.
3. That nothing binds the People of England, but an *Act of Parliament*.

Now perhaps 'tis thought that the Government is now made *Elective*, and therefore is not *Hereditary*.

Again, that it having been declared, that by the late King's *Abdication* there was a *Vacancy* in the Throne, therefore an *Interregnum* was admitted.

Lastly, that this new Change was made by a *Convention*, and not by a *Legal Parliament*, and therefore we are not bound to own it.

Such kind of Suggestions as these, I fear have created Shyness and Aversion in many good Men from a due Recognition of the present Government; if we can make it appear, that in truth they are vain and groundless, I hope all good Men will be easily entreated to lay

afide that Aversion, and be sweetned to a better Compliance, both for the Sake of the *Publique*, and their *own*.

We proceed to consider every one of them in order, and the several *Grounds* or *Reasons* they seem built upon, and whence they are alledged and objected.

C H A P. III.

The Government, whether Elective or Hereditary, and how.

IT may be thought by some, that by the late *Change*, the Government is made *Elective*, and therefore is altered, and is no longer *Hereditary*, as it was before.

The Vanity of this Argument appears, if we make good these two Propositions.

1st. Our Government was never so absolutely *Hereditary* as to exclude *Election* in all respects.

2^{dly}. In our late Settlement, there was nothing done in Prejudice of our *Hereditary Government*.

Prop. 1. The first of these Propositions, viz. That our Government was never so absolutely *Hereditary*, as to exclude *Elections* in all respects, appears,

First, Because all along in our *Histories*, we find the Words [*Election* and *Elected*] used as previous to the Crowning of our *Ancient Kings*.

Some of them came to the *Crown* without any Colour of Title. Some, though not next in Blood, by the *Nomination* of the last King. Some only as being next in Blood, without such Nomination. And lastly, Some both by *Proximity* of Blood, and by the *Nomination* or *Testament* of the Predecessor. Now

Now if in History all these are said to be *elect*, certainly we have no reason to be offended with the Word; or imagine that our Government abhors all kind of *Election*.

But this is plainly acknowledged by the industrious Dr. *Bradie*, while he is in pursuit of the *Hereditary* Succession; the *Saxon* Expression, saith he, concerning *Succession* and the *Successor*, is always the same, *Feng to Rite*; render'd usually *successit*, *Electus est*, he took possession of the Kingdom, he succeeded, he was chosen, &c. *Hist. of Success.* p. 366.

Edgar left his Son Heir of the Kingdom; and the great Men chose him (*elegunt*) as his Father commanded.

Harold, *Henry 1.*, and *K. Stephen* obtained the Crown (they say) by fraud and Violence; yet by several old Monks are said to be elected.

They said some of our Kings that had undoubted *hereditary* Titles, were elected, so *K. Henry 2.* *ab omnibus electus*; so likewise *K. John* and *Richard 3.* are said to be chosen, as he observes in his parallel, p. 412.

Brad. Gloss.
p. 38.

But to do the Doctor Right, I confess he contends earnestly, that however the words were used in such cases, indeed there was no such thing as *Election* or proper Election of any of these Kings; and that Election signified only *Recognition*, Applause, or Proclamation, and sometimes only a forc'd Submission; at least they were never chosen by the Community of the People, as they are now understood, but by the great Men of the Kingdom.

But that Controversy I leave betwixt the Doctor and his Adversaries; observing only for my present purpose, that our ancient Kings, both *Saxons* and *Normans*, are in the Chronicles of England frequently said to have been chosen or elected.

So

So much for the Word: and now with the Peace of the ingenious and laborious Man lately mention'd, I would modestly enquire whether we find not some strokes in our History of a *real Election* of our Kings in some Instances at least, so far as to interrupt the strict Opinion of hereditary Succession: And here I have no need to assert the Election of the People, or go off from the Doctor's own ground or concession, either about the ancient Practice, or the declared Judgment of the Kingdom.

1. In the Saxons time, the Doctor saith, he hath discovered a sure Rule of *Succession*; but this was double, either Right of *Blood*, or the *Nomination* of the preceding King; 'tis confess'd then that Right of Blood was not the only Rule: hence he lays down his ordinary distinction of *Jus Hereditarium* and *Jus Testamentarium*; yea he tells us, that the Testamentary Heir, that is, one that comes to the Crown by the last King's *Will*, tho' not next in Blood, is said to inherit.

But to apply this distinction, methinks it doth two great things; it first, plainly yields the Cause so far, as to the necessary descent of the Crown in Proximity of Blood: Secondly, it gives a shadow at least of *Election*, if not in the People, yet in the King, if by his *last Will* he might pass by the next in Blood, and name (that is, properly to chuse) another to succeed him in the Throne. Besides, if this was anciently done, both frequently and lawfully, where shall we find *hereditary* Government in the strict sense of it in the Constitution of the Kingdom? or how shall we defend it from being in no wise *elective*?

Yea, if the King himself upon some considerations might chuse his *Successor*, and set aside the next in Blood, without wronging him, certainly upon great Considerations,

tions, the like may be done by both the King and People. And we find that Testamentary Heirs of the Crown, tho they were indeed *named* by the King, are said to be *chosen* by the People, and yet are also said to *inherit*; and if we observe it narrowly, we shall easily note, that the words *Hereditary* and *Elective*, with respect to the Government, are some-times confounded in *History*; *Successione Hereditaria eligere*, was no contradiction. The Testament of *Estheroph*, *Florence of Worcester* calls it *Epistola Hereditaria*; by which it is said, he set aside his own two Sons, as the Doctor notes, p. 363. where he tells us moreover, what the Law of *Succeſſion*, as well as the *Practice* then, was; the *Saxon Kings*, saith he, *might appoint a Brother's Son, or a Bastard, to succeed them, before their own lawful Issue.*

But to come a little closer: I may demand where, when, or how this Maxim [that the Crown of *England* is necessarily annex'd to Proximity of Blood in the Royal Family] came to be of the Foundation or *Constitution* of our Government? That it was never made so by *Custom*, or any other Law, or by any other means, the learned Doctor yields us, by his Refuge in a *Testamentary Heir*.

I am assured under the hand of a very learned Lawyer, who is a great Friend of the *Hereditary Monarchy*, that this Maxim (in contradiction to the former) [the *Crown was alienable and devisable*] was retained, and never contradicted until the *Resignation* of *K. John*: and since that time how hath it been contradicted or denied either in practice, or the declared Judgment of the Kingdom? It is evident enough what the sense of the King and Parliament was in *Henry 8th's* time, and since in *Queen Elizabeth's*, and since that in our late *Parliaments*.

And nothing to the contrary can I think be fairly inferr'd, either from that Act of 7. *Hen. 4.* that limited the

Suc-

terest in the Constitution of the Kingdom; for it seems to have governed the Disposition of the Crown all along, both before, as well as since *William* the first; and that, generally, with our several Kings and Parliaments, ever since we had any.

I shall leave this easy Observation, only take notice of *two* Concessions, which I apprehend considerable: The first is that of Dr. Br. he saith, the *Saxon* Kings might appoint a *Brother's Son* or a *Bastard* (he doth not say, any other Person, or any one out of the Royal Family) before their own *lawful Issue*, to succeed them in the Throne, p. 363. *Succeſſion of the Crown.*

The other is of *Embert A. C.* at the *Coronation* of *R. John*, he declares indeed that the King ought to be *elect-ed* by the *People* (perhaps a new Doctrine to many that heard it) yet he qualifies that *Election*, and tells them, that if any one of the *Race* of the late King was more deserving than others, the *People* ought (*promissus & promptus*) more readily consent to his Election.

Now if the Descent of the Crown ought to be kept within the bounds of the *Royal Family*, Is not this sufficient to constitute an *hereditary* Monarchy, in a true sense, tho' with the former latitude? Was it ever thought essential to an *Inheritance*, to pass uncontrollably without any exception to the first in Blood? Is it not enough for the nature of an *Inheritance* to be granted to *me and my Heirs*? And may not Custom dispose it to the *younger* as well as the *elder*? Hath not the *Parent* liberty to give it to whom he will? Yea, is it consistent with a Fee-simple to be *unalienable*? or with *Salus Populi*, in all possible Cases, for the *Crown* to be so? especially in our own Kingdom, where frequent *Practice* seems to have established as the *Common Law* of the Crown in all Ages, that upon urgent Reasons for the safety of the Kingdom, the
Inhe-

Inheritance is *alienable* from the next in Blood. Nay, I must presume, that tho' upon some extraordinary Revolution, and some absolutely necessary Reason of State for our common Preservation, a *Stranger* should be advanced to the Throne, for one or more turns, while that necessity continues; I presume, I say, if when the Reason of that *Violence* is removed, if care be taken to have the Crown restored to the Royal Family, or any of its Branches, capable of it, the *Hereditariness* is not thereby extinct, or the Constitution of the Government altered, things may then run again in the *old Channel*, and settle upon their *old Bottom*.

And since we are gone so far, may I not without Offence advance one step farther?

Is there no Priviledg by *Primogeniture*? Doth not Nature and the general course of Inheritances, where there is no special Reservation or Exception, point out the *next Heir* for the Possession? Yea, is there not very much to be found in our *Chronicles*, and Laws, and actual Succession of the Crown, in favour of the *next Heir* by proximity of Blood? Can we find by our most diligent search of our publick Records, that ever the next in Blood was set aside, without some Reason or pretence of Reason? which very thing seems to allow his Right, whilst it alleges something against his Possession. Whence we may conclude, that tho' for sufficient reasons the next in Blood may be set aside, yet without such reasons it seems neither just nor fit that he should.

The Royal Family have a Right in *Actu primo*; the next Heir seems to have it in *Actu secundo*; namely, a *Jus in re*, and as much a Right as can be conceived, short of Possession, if nothing can be justly objected against it from his *Unfitness* for the Government. Immediately upon the Decease of the *Queen* (saith the *Par-*

Next Heir.

liament in their Recognition of King James the first) the Imperial Crown did by inherent Birth-right, descend to you the next Heir of the Blood Royal.

Thus the Royal Birth-right hath the Acknowledgment of the whole Kingdom, or the whole Body of the Realm, and every particular Member thereof, as the Words of the Statute are ; and this Birthright hath been often claimed, and often frustrated, but I think never denied, or so much as questioned.

Prop. 2. *There was nothing done in Prejudice of our Hereditary Monarchy, by our late Settlement.*

This is the other Proposition I undertook to make good in defence of our present Government ; and reflecting upon what we have lately discours'd, we are necessitated to take notice of, and to set our selves to answer a very considerable Objection thence arising, as some strongly fancy.

Obj. Hence we are fallen upon the great Objection ; 'Tis thus, If the Right of the Crown be inherent in the next in Blood by Birth-right, why upon the Demise of the late King, did not the Government devolve on his Daughter the Princess of Orange ? By preferring the Prince of Orange before the Princess, whose right it was, seems not agreeable to an Hereditary Monarchy, and so makes the Government Elective.

Ans. I hope there are already sufficient Grounds laid for an Answer hereunto : All that I have to do is to apply them in a few plain Propositions.

1. We have found reason to distinguish thus ; The Crown may be thought alienable, either absolutely, or in a qualified sense ; that is, such a sense as is consistent with its being Hereditary.

2. One

2. One may think that the Crown is not absolutely at the Peoples Disposal ; in our (or in any) Case, or *alienable* upon any Occasion, or to any Person ; and yet may conceive that upon plain necessity, created by *Salus Populi* the Supream Law, and the very end of Government, the Crown may be alienated from the *next in Blood*, to the second ; and upon the like reason to the third.

3. 'Tis further evident to me, That a Man of that Perswasion may yet judg that the *next in Blood* that is capable of the Government, may of *Right*, and by the Law of *Inheritance* claim the Crown, which without Injustice cannot be denied him.

4. It hence followeth, That the Supream Power upon the Demise of the late King, did not devolve upon the *People*, nor imediately upon the *Prince of Orange*, but upon his *Princess*. Upon these grounds indeed it must be granted that the *Princess* should have been Queen as Queen *Mary* was, that is, in the place of the *King* ; and next to her, the Princess of *Denmark*, unless some very great Reason of *State* will justify the preferring the *Prince*, who is not next in Blood, before them both.

5. Doubtless those whom we intrusted to manage and methodize our Settlement, saw, as they judged, *unanswerable* Reasons to advance the *third* in order, before the *first* and *second*, and methinks that should satisfy us.

6. But moreover we are morally assured that both those noble *Princesses* were themselves satisfied of the Reason of it ; yea, that both of them consented, yea desired the Crown might be settled in the order as it is.

7. And may it not be very reasonably granted, that some great Considerations (though we know not what they were) might move them *cedere de jure suo*, to wave their

their own Right, and these such as might warrant and justify their so doing?

8. Yea, if there be such a thing as *Abdication* of Government, did not both those noble *Princesses* expressly, and not only by Implication, so far abdicate the Government, if they actually and voluntarily so far refus'd it?

Obj. But had not the Prince of *Denmark* some kind of Right in and by his Lady?

Sol. It seems to me he had; but it is very evident that he consented and waved what Right he might have, as both the *Princesses* did theirs.

Obj. But the People of *England* seem to have a right to be governed by the *next in Blood* of the Royal Family.

Ans. This too may be granted: but the People of *England* in this sense, are the Lords, and the Representative Body of the *Commons*; and have not these both consented to, and transacted the present Establishment for themselves and us?

To conclude this, Upon the late *Demise*, nothing could bar the Prince of *Orange* from a just and immediate Title to the Crown of *England*; but the Right of his Princess, the Right of the Princess, and in and by her of the Prince of *Denmark*, and the Right of the Nation in these; but all these Bars are fairly removed by the Consent and Desire of all Parties concern'd, and none have left them any cause to complain in that respect.

Now I hope here is nothing done destructive of the *Hereditary Monarchy*, nothing that can infer the Government to be *Elective* purely in the whole Transaction; much less so great an Alteration in the nature of our Government for the future. What Principles some were upon in our late Change, we need not guess, so long as we find nothing evident, either *verbal* by Declaration of our Governours, or by any thing in the Change it self, but

but what is fairly reconcileable to our ancient *Constitution*; we may, without troubling our selves with other Mens Principles, cheerfully submit to the present Government, if we have no more to object, but that the Nature of the Government is altered by the Revolution. An evil Surmise without ground, ought to be laid aside.

C H A P IV.

Of Vacancy, and the supposed Interregnum thereupon, by the late King's Abdication.

WE are thus led to the second great Exception, which is this, It is declared by the Lords and Commons in the Convention, that the late K. James the Second having abdicated the Government, the Throne thereby was vacant; consequently an *Interregnum* was admitted or supposed, contrary to the ancient and known Maxim, That in the Government of this Kingdom there is no *Interregnum*.

For Answer hereunto, I hold my self obliged to do two things: first, to consider how and in what sense the late King abdicated the Government; this may justify the filling the Throne with the the present King and Queen. 2dly. To shew that there hath been nothing said or done by the Convention, as such, that hath declared a *Vacancy* in the Throne in that full and absolute sense, as might infer an *Interregnum* in the true meaning of the Word. And thus the present Government will be vindicated and reconciled with the ancient, and this great Exception I hope fully satisfied: and this methinks I am strictly tied to, by my last Discourse of *Hereditary Monarchy*, as will presently appear more plainly.

C H A P. V.

Of A B D I C A T I O N.

FOR the first, That the late King did really *abdicate* the Government, hath been so fully spoken to by others, that I need not much labour in the Proof of it. My chief Intention is to reconcile the Word to the Notion of my Brethren that are so much offended with it.

1. I desire them to consider, it is a *Law-term*; and but seldom used amongst us; why should we not take the Signification of it from the Learned in that Faculty?

2. But 'tis of greater Weight, that the *Lords and Commons* differing about this Word at their *Conferences*, such a sense was beaten out, after much Debate and Argument, upon the very same grounds upon which many seem now offended with it; that the Wisdom of the Nation in *both Houses* acquiesced in this word, as the fittest for the purpose. By our *Election* we intrust them with all we have, and cannot we trust them with a Word?

3. That which seem'd to reconcile the *two Houses* in the word *Abdicate*, was not the critical notions of the *Civilians*, but the Explication of what was then to be meant by it, which I am told was happily effected by one (who is a Wonder in the Learning of the Law) in these or the like Words, in which before they were agreed.

That King *James* the 2d. by going about to subvert the *Constitution*, by breaking the Original *Contract* between King and People, and by violating the *Fundamental Laws*, and withdrawing himself out of the Kingdom, has thereby renounced to be a King, according to the *Constitution*, by avowing to govern by a *Despotick Power* unknown to the *Constitution* at his *Coronation*; such a King to whom the *Allegiance* of an English Subject is due: and has set up another kind of Domination, which is to all intents an *Abdication*, or abandoning his Legal Title, as fully, as if he had done it by express Words.

Now if these things were true, as no body I think can deny, and amount to an *Abdication* in the just, and publickly owned and

and explained sense of the Word; how is it possible we should any longer scruple about it?

Obj. The Meaning of it then is, that King James thus ceased to be King; but this is doubted.

Sol. But the Body of the *Kingdom* say he did; and you will not say but 'tis possible: for a King may cease to be so, by a *voluntary Resignation in Word or Writing*, which is formal Abdication; or, as *Gracian* seems to expound the Words by *monestes habere pro derelicto*.

Now if the late King did as much by his *Actions* as an express Abdication amounts to, did he not virtually and as really relinquish or abdicate the Government, as if he had in so many Words renounced it?

13. And that he did so, is too evident by what is before alledg'd against him, especially if we add his putting down the *ancient Defence* of the Kingdom; the *Militia*; and beginning to rule and defend his Arbitrary Government by an *illegal Standing Army*; if when he voluntarily departed from us, he dismissed his Judges, threw away the Broad-Seal, and disbanded and let loose upon us his illegal Forces, and left us in a perfect *Anarchy*; as was then apprehended; even by such as now are offended with the Word *Abdication*.

The Caution of the *Convention*, to avoid all colour of Offence, seems admirable. If they had said the late King had forfeited the Crown, that would certainly have more offended you; and if they had deposed him, much more; these are both avoided, and his only said he *abdicated* the Government; they do not only say it was his own Fault, but his own Act.

Obj. But thus we make him *Felo de se*.

Sol. This seems to be no hard saying. 'Tis plain, though the King in his personal or natural Capacity cannot, as you think, forfeit his Life, yet he may *die* or *kill* himself: So in his political Capacity, if we grant that the King cannot forfeit his Government by male Administration, yet 'tis possible he may extinguish and destroy it, and that by a real as well as by a formal Abdication, as before explain'd. Government according to *Law*, is essential to our Government, otherwise our Lawyers are much out, that generally tell us our Government is a *Legal, Royal*, or as *Porteus* says, a *Political Government*, in opposition to *Despotical, Absolute, Arbitrary, or Tyrannical Government*.

ment. ~~Altho~~ though a King do not intend absolutely to abandon all kind of Government, yet when he leaves that proper Government, and assumes another kind of Government abhor'd by our Constitution, he plainly ceaseth to be our Governour in any sense; he refuseth to govern politically; he would bring in another Species of Government that is destructive of our Constitution; and begins in many odious instances, the Execution of *Tyranny*; contrary, not only to the Laws that make and limit our Government, but contrary to the ends of all Government; and instead of protecting, destroys his People; what can be plainer than that this is to abdicate the Government as King of England? A King may kill himself, and not intend it.

To this purpose we have several notable Collections made by others. I shall note a few of them.

Among the Laws of K. Edward. C. 17. *de Regis Officio*, the Liberties of the People being mention'd, it is said, that the King is constituted for the Preservation of them, which if he do not, *non nomen Regis in eo consistit*; he doth not retain the Name of a King.

Braddon says l. 2. c. 24. *Est enim Corona Regis facere Justitiam & Judicium, pacem tenere, sine quibus consistere potest non tenere*; i.e. The Crown of the King is to do Justice and Judgment, and to preserve Peace, without which he cannot subsist.

But above all, the Words of K. James to his Parliament March 21. 1609 are remarkable. 'The King is bound by a double Oath to preserve the Laws, tacitly as being King, and expressly by his Coronation Oath: So as every just King is bound to observe the *Pactum* made with his People by his Laws, framing the Government thereunto; and a King *ceaseth to be* King, and degenerates into a Tyrant as soon as he leaves off to govern by Law, in which case the King's Conscience may speak to him, as the poor Woman to Philip of Macedon, Elsether govern according to Laws, or cease to be King.

Answerable hereunto is the *Civilis Maxima*, *Tyrannus in Exercitio abdicat Jure suu Hereditario*; i.e. Tyrants by their Tyranny lose their Hereditary Right of Government; for the Ill of Monarchy is Tyranny; K. Charles's Answer to 19 Prop.

From what hath been said, it seems plain, that a King by relinquishing the Legal, and usurping an *Arbitrariu* or Tyrannical

and Government, does as effectually *abdicate* the Government as King, as a Merchant that turns Pirate, abdicates his Trade; or a Husbandman, that leaves off his Husbandry, and resolves to lost the fortune of his life upon robbing on the High way, *abdicates* his Plough.

Lastly, 'tis so evident in those that give us the sense of the word, that there is a *real* Abdication, as we have considered it in distinction to a *formal*, that nobody that will take the pains to examine can doubt it: Not only *Gracian, de Jure Belli & Pac. lib. 2. c. 14. §. 4. Non tantum verbis sed re potest*: but *Gravin* in his *Lexic. Juris*, tells us, *Generum abdicat, qui Sponsam repulsa*; he that divorces his Wife, doth abdicate his Son. So *Abmo liber qui seipsum vendit, abdicat se statim suo*, saith *Brissotius de verb. sign.* that is, he which sells himself, *abdicates* himself from his former state. And *Budaeus Comment. de Origine Juris, Abdicare se Magistratu est idem quod ibire penitus Magistratu*.

1. For the Application of the Word so explained: And to all that had been said to prove the late King's *Abdication* complete and undeniable, it ought to be remembered; that in the very times of Popery here, a submitting to Papal Usurpations and Authority contrary to our *Laws*, was deem'd a *Disinherison of the Crown*. What shall we say of the late King's voluntary, studied and deliberate *involving his own Authority*, and subjecting the whole *Ecclesiastical State* to a foreign Power, to the utter Extirpation of our *Reformed Constitution*, so firmly settled in the *special Laws* of the Land to that purpose? Considering also how this in a little time must inevitably ruin the *Civil State*, which is intimately interwoven with the *Ecclesiastical* in their just *Liberties* and true *Religion*; their very *Consciences* and *Lives* not being safe from the *Snares* and *Inquisitions*, and even *Massacres* of the most cruel, tyrannical and *barbarous Religion* in the World.

25 Ed. 3.
Stat. 6.
Præmunire Provisors. Ed. 1.
Letter to the Pope.

2. This, in conjunction with the late King's Proceedings in *Civil Matters*, needs no Aggravation. The *Crown of England* is glorious in a threefold Excellency, the *Legislative*, *Executive*, and *Military Power*. Now for one of our own Kings to do that industriously, and by many designed deliberate Acts, which is rank *Treason* against the King and Kingdom, which at least hath *intendency* to destroy the King, with respect to his *Crown* and *Dignity*, what is this but to *destroy himself*? For a King to

direct himself of the *Legislative Power* by the use of all Artifices of *Fraud and Force*, to destroy the *fundamental Privileges* of *Election*, and consequently the very Being of a *legal Parliament*, his *executive Power*, by refusing to govern by *Law*, and setting up an *arbitrary tyrannical Government*. Lastly, his *legal standing military Power*; laying aside the *Militia*, and resolving to stick to an *illegal Army*, what is this but to *relinquish* the Government of *England*, to throw away all *Regal Authority*, to violate, break in pieces, and trample upon the *Crown*; to declare to all the World, he will be *King* no longer; and to abandon the Authority which he had to govern by *Law*, according to the Constitution of the Kingdom, his Duty to his People as *King*, and the special Bond upon his Soul in his solemn *Coronation-Oath*?

3. But at last, to crown all, when the Noise of the *Prince's* Coming had brought him a little to himself, and he begins to feel the danger that his late daring *Pranks of Tyranny* had brought him into, he adviseth with his *wise Council* what to do: Should he trust his People in *Parliament*? No: Should he trust his melting *Army*? No: Should he trust his dreadful *Son in Law*? No. What then? as the *evil Spirit* rent and tore the Body when he was forc'd to leave it, so he did all the mischief he could, (by calling in his Writs for a *Parliament*, dismissing his *Judges*, carrying away the *Broad Seal*, and putting an end to all kind of Government among us as before) and then leaves us in absolute Anarchy, and a way of Confusion, upon a *necessity* apprehended (of his own creating) of dispossessing us, he flies to his trusty and well-beloved the *French King*; thus at once delivering his *Person*, and in consequence directly betraying his *Kingdom* into the Power of the only *Friend* he has in the World, but his Kingdoms only *Enemy*.

In a word, to put an end industriously to all Government at home, and as far as in him lay, to deliver himself and his Kingdoms into the Power of a *foreign Enemy*, seems to be an Abdication with a Witness, at least so far, as to leave the Throne vacant.

C H A P. VI.

Of Vacancy and Interregnum.

BUT it may be said, That if the late King did *abdicate* the Government, and thereby the Throne became void ; then we admit an *Interregnum*, contrary to an ancient *Maxim* in our Government : But the *Convention* did declare, that the late King did so *abdicate*, and the Throne was vacant ; therefore they have altered the *Constitution* of our Government.

Ans. 1. Hereunto I answer, first, That I for my part know no Law against the possibility either of a *Vacancy* in the Throne, or an *Interregnum* ; I mean, in *extraordinary* cases, such as ours was ; or when the Royal Family may be supposed to be *extinct*, or all the remaining *Branches* of it are known to have imbibed *Principles* directly against the *Interest* and Religion of the *Kingdom*, and destructive of what should be preserved. I cannot say but the *contrary* Opinion seems to consist with some *ancient* Transactions of our States.

2. For a *Vacancy* in the Throne, we have an express *Precedent* in the sense of the *Parliament* about *Richard* the 2^d ; and if so, that will infer so much of an *Interregnum* too.

3. I confess of later times, the Recognition of the *Parliament* made to *K. James* the first, seems to exclude both a *Vacancy* and an *Interregnum*, that is, at least when things proceed *ordinarily* and regularly ; the words are, *Immediately upon the Decease of the Queen, the Imperial Crown did by inherent Birthright descend to you the next Heir of the Blood Royal.*

And this it concerns me to observe, as agreeable to the *Hereditariness* of our Monarchy, as before I have declared it.

A Digression.

But before I proceed, I desire it may be always remembered, and that we still carry this along with us, That tho the Crown be *Hereditable*, yet Government is an *Office* and Service, or Ministry to us for good, *Rom.* 13. and that by our *Law* 'tis in the nature of an *Office* : that it may be lost three ways ; either by *Insufficiency*, or *Forfeiture*, or *Cession*, called Non-qualification, Abuser, or Non-user : And how far these, or any of them, are applicable to the Possessor of the Crown in *England*, may be considered in the ensuing Discourse.

At present we shall observe, that he that takes an Office, tho it be by way of *Inheritance*, takes it with its *Conditions* and *Burthens*. Indeed, there are Advantages and Profits annex'd to the Office, and sometimes real Estates in Land, which are inseparable from it, and cannot be lost while the Officer continues in the Office: And thus it is with our *Crown-Lands*, wherein the King hath *vested dominion* in Right of the Crown; which no Man hath in his Land besides the King. Yet if the Government be an Office, and these *Crown-Lands* be in the King, as he is King, and hath that Office, and not simply in him as such a Person; he cannot lose them any way during his being King; but he seems to hold in the nature of a *Benefit*, from and for another; i. e. his Kingdom, he owes Duty for it, tho not Fealty for it: And the Statute 37 Hen. 8. cap. 15. useth the word *Fee* of Lands invested in the Crown.

Vid. Blounts
Law dict.
Fru.

But leaving this Digression, we must return; and therefrom two Doubts depending here, that I must a little insist upon, Whether the Convention did indeed declare the Throne *vacant*? and whether we are bound to believe that Vacancy to be so absolute as to infer an *Interregnum*?

The first Doubt touching Vacancy, viz.

First, Whether the Convention did indeed declare the Throne to be *vacant*?

1. If it be plain they did, they did so as our *Representatives*, and why should not that satisfy us? at least why should we be troubled at it, seeing their so declaring passeth not into our *Allegiance*, or the succeeding exercise of the Government; besides, we are left at liberty to enjoy our private Thoughts about it; and tho they declared so, we are neither required to declare it, or to believe it.

2. But in truth (whatever might pass at the Conferences of the Houses about it) their Words that give us their *Assent* in publick, do not express or formally make any Declaration, that the Throne was *vacant*.

Their words are these, [K. James the 2^d having abdicated the Government, and the Throne being thereby vacant] here is indeed a plain Supposition that it is so, but no Declaration. So that if the Throne was not vacant by the King's Abdication, they do nothing to make it so; all the Suppositions in the world cannot make that to be that is not.

Therefore if that King had really abdicated the Government, and yet there was no *Vacancy*, there was neither any *Interregnum*; but the Defect was immediate; and the Succession regular in the present King and Queen.

But if the Throne was really void by that King's abdicating, and the *Convention* was not mistaken in their Supposition, as we should not easily imagine, then we are concern'd to consider the second Doubt.

The second Doubt.

Whether we are bound to believe that Vacancy to be so absolute, as necessarily to infer in the meaning of the Convention another Interregnum?

Sol. In general my answer is, There is no necessity for such a Belief; nor indeed any reason for it in my apprehension.

The *Convention*, as I observed before, did not declare a *Vacancy* at all, only they suppose it, as the undoubted Consequence and Effect of the *Abdication*; having abdicated the Government, and the Throne being thereby void.

Now that the King's *Abdication* did or did not leave the Throne vacant, depends upon the Nature of the things; and are not affected by the *Declaration*; neither can we by our Jealousies or Imagination make things otherwise than they are of themselves, or make the Declaration import another and a stricter sense than in reality doth.

For a fuller answer therefore, three things are distinctly to be considered.

1. How far a *Total Abdication* may effect a Vacancy in the Throne.

2. Whether we have reason to think that the *Convention* did suppose a *Vacancy* in any other sense.

3. Consequently whether that sense imply an *Interregnum*.

Quest. 1. How far a *Total Abdication* of the Government may (or doth necessarily) effect a *Vacancy* in the Throne.

Sol. For the clear answer to this, we must take our Measures from the Nature of our Government, which hath been supposed to be *Hereditary*.

1. Now if the Government be indeed *Hereditary*, though there be a *Vacancy* in the Throne, truly wrought by the *Abdication* of the Government, as the *Convention* supposed, it can-

not.

not be reasonably imagined to be an *absolute* and total *Vacancy*, or such in all respects.

2. The Reason of the Consequence seems plain from this, because the *Vacancy* was made by *R. James*, and he could not make it further than he could. He could not prejudice his Heirs, or leave the Throne empty in all respects; for the Statute of *R. James the First* declares, agreeable to all times, *The Imperial Crown by inherent Birth-right, doth immediately descend to the next Heir of the Blood Royal upon the Decease of the Predecessor*. The Royal Family have *Jus ad Rem*, but the next in Blood, if without just Exception, hath *Jus in Re*, and wants nothing but *Livery and Seisin*.

3. This carries a plain *Analogy* with the Interest of others; and if it be a *Priviledg*, cannot be denied to our Princes. The Estate is in the Heir immediately upon the Death of the *Possessor*; and if the Estate be forfeited, 'tis immediately in the next Tenant, though in neither case they may have yet got *Possession*. And we use to say, the Heir to the Crown is King before either the *Coronation* or *Proclamation*; i. e. The Throne upon Demise is instantly fill'd, and there is no *Vacancy* in that sense.

All Land
is Obedience,
or in Fee of
some Man.
Rule in
Law.

4. If the right *Heir* before entry be kept out of *Possession*, the Estate is not in *Obedience*, or in *Nubibus*, but, as the Lawyers say, in *Abatement*; the Estate is really in the Heir, though they say the Law favours the intruder, as the lawful Possessor, till the Right of the true Heir is proved, which I have no reason to apply.

5. However, 'tis plain enough that the *Convention* supposed the late King by *Abdication* left the Throne void in some respect; and what that was, must certainly respect himself, and not his Heirs; he left the Throne void, as to his own *Person*, and as to his *Possession*, and as to his own Right, by relinquishing the Government.

6. Yea, he left it void as to any present *Administration* or *Administrator*; and therefore it being so void, *ipso facto*, the great Men of the Kingdom first desired the Prince of *Orange* to take upon him the Administration of the Government, till the *Convention* should meet. This he did, and this *Vacancy* was the natural Effect or Consequence of his *Abdication*; but we may not strain the Word to the altering the nature of our Govern-

Government; neither may we imagine a *Papist's* Abdication should bar or prejudice his *Protestant* Children, or change our *Constitution*.

7. I hope I have said nothing in prejudice of any *Limitations* or *Conditions* of the Crown, either in Law, or from the necessary Nature of Government, or by *Act of Parliament*; if according to such Conditions the next in Blood be not qualified, the Throne may be filled by the Right or the next. When the Throne was declared void upon the Deposition of *Rich.* the 2^d. his Son was instantly admitted; as were before the Sons of *Edw.* 1. and *Ed.* 2. upon their removal.

8. We are told that before the Stat. 25. *Edw.* 3. *de natis ultra mare*, it was a received Maxim, that the next in Blood born beyond the Sea should not be King: and by that of *Eliz.* 23. c. 1. Persons opposing the Execution of that *Act*, are thereby disabled for ever. Yet we still conceive, that the next Heirs after them, (better capacitated, and not guilty or defective as they) might claim the Crown, otherwise all other Persons are under the same Penalty, though not at all guilty; and the Penalty is not restrained to the Person offending, or to the Crime mentioned in the latter; or in the *Incapacity* in the former Instance. The Statute of the Queen plainly supposeth that some may claim, which cannot consist with an *Elective* Government; and if the next in Blood are disabled by Law to claim, it follows, the Right is some where else, and by Virtue of that Right the Throne is so far fill'd, and Possession may be claimed.

Edgar was set aside, being neither in Body or Mind fit to govern, Ingulph.

With full consent in Parliament the Queen of Scots was desired to be disabled. Burl. Letter. And of late the Duke of York.

Quest. 2. Whether we have reason to think that the *Convention* did suppose a *Vacancy* in any other sense.

Sol. We may receive full Satisfaction in this, from what hath been said upon the first Query.

For what reason can we have in *Justice* or *Charity* to imagine the *Constitution* intended any further *Vacancy*, than was or could be made by the late *King's Abdication*? what reason is left us to think that they intended such a *Vacancy* as was inconsistent with the nature of our ancient *Hereditary Monarchy*, or the Interest of the *Persons* that are now advanced to the Throne in their own Right? of which we have given account before;

or why should we impose a groundless and an unreasonable sense upon the Proceedings of our Superiors, as may forestall or prejudice our quiet and due Submission to the Government?

2. For our further Satisfaction, we ought to consider, first the *Persons* whom they admitted to the Crown, namely such as, upon Avoidance, upon their *Inherent Birth-right* might have claimed the Crown. Secondly, The Words of the *Declaration*, by which they were admitted. [*The Throne being thereby vacant, we do resolve that William and Mary be, and be declared King and Queen.*] They do not say they make them so, but resolve that they are so, and then declare them to be what indeed they were.

3. And now I must have leave to admire the Wisdom, Foresight and Caution of that great *Assembly*: they do not say hold of a *Forfeiture* of *K. James*; they do not pretend to depose him; they do not insist upon his *Resignation*; but they suppose and alledge strong Grounds of that Supposition, that he had abdicated the Government so far, as that with respect to him, to all Intents and Purposes, the Throne was void; and therefore to maintain the *Hereditaries* of this *Monarchy*, they allow the Right of the next Heirs, *viz. William and Mary*; and accordingly upon that their Title, they declare them King and Queen.

Quest. 3. Whether the sense of Vacancy thus explained, imply an Interregnum? This can be a Question no longer, if we consider the Premises; for such a Vacancy we have upon every Demise of the Crown, yet no *Interregnum*.

C H A P. VII.

Of the Convention, and how it became a Parliament.

The Third Maxim considered.

Obj. **WE** are arrived to the Consideration of the third great Exception, *viz. That it is a Maxim, that nothing binds the People of England but an Act of Parliament*: But the present Government was made by a *Convention*, and not by a *legal Parliament*; therefore we are not bound to own it.

Sol. 1. To this, first, it may be replied, That tho this *Ad-
xim* be generally allowed, yet not without some *Exceptions*.
For is not *Custom* and the *Common Law* the Rule of Right and
Justice betwixt Man and Man, yea and betwixt the *Prince* and
the *People*? Were there no *Statute* or *Act* of *Parliament* about
Government and Subjection? Yea, were there no *Coronation-
Oath*, or Oath of *Allegiance*, to be taken by the *King* or the *Sub-
ject*? Yet, from the nature of our Government, and by *Com-
mon Law*, the King ought to govern according to the *Laws* and
Customs of the Kingdom; and we ought to *pay* him our natu-
ral Allegiance. Yea, it is not questioned by those that most
Scripture about the present Settlement, but now there are positive
Laws, requiring those Oaths, yet before they are taken, the
respective Duties both of King and People are to be observed
by force of the radical nature of our Monarchy, and the fun-
damental *Constitution* of Government in our *Common Law*.

2. For a further Answer we must remind what hath been
said of our *Hereditary* Monarchy, which if understood in no
other sense, than these very Persons are eager to maintain, we
think supercedes this Objection.

For if the Government in their own sense be hereditary;
then, in consequence of it, when the Throne is vacant of the
Predecessor, it is in the same instant fill'd by the *next* Heir, as
to Right and Title, in Analogy with all other Cases of Inhe-
ritance; and even from the nature of *Inheritance*. We need
not here speak over again what we have about the late King's
Abdication, and leaving the Throne *void*; we may be allow'd
here to suppose it; and then 'tis evident that, upon this ground,
upon that avoidance, without any intervention or Act of the
People, either in a *Convention*, or *Parliament*, the *Crown* immo-
diately descended to the next Heir of the *Royal Family* by Right
of Blood, or Birth-right.

3. So far for their Right. As to their Entry and Possession of
the Government, tho in all such extraordinary *Revolutions* it
hath been safest, to be admitted with the Consent of the *Peo-
ple*; yet 'tis evident from the same Concession, that it is their
Inheritance; that the next Heir may *claim* and take possession
of himself, without the Consent or Act of the People; that is,
he hath right to do so; and if he be hindred and kept by force
from his lawful Entry, without *just Cause*, or his own Consent,

he is apparently injured. And this seems to follow irresistibly, from the nature of an Inheritance.

4. Accordingly, the Duke of Lancaster came into the Parliament, and claimed and *challenged* the Crown as descended unto him, by the *right Line* of the Blood of Hen. 3. and his Claim and Challenge without any Dispute was immediately admitted.

Upon the Resignation of Edw. 2. his Son Edw. 3. as the *first-born* and Heir of the Kingdom, declares, that upon his Father's Concession by the *Counsel* and Advise ment (no other Act) of the great Men, he *assumed* and took upon him the Government.

5. But I need instance in no more, when we have considered what passed in Parliament, Edw. 4. They declare the King was in Right, from the Death of the King his Father, very *just King*; and that they take and repute the said Edw. 4. according to his said Right and Title, declaring his Title was just and lawful, as grounded upon the Laws of God and Nature; and also upon the ancient Laws, and laudable Customs of the said Realm. Agreeable hereunto was the Recognition of King James before-mentioned.

6. Now if we apply this to our own Case, may I demand, What was there left for the Convention to do? King James had relinquish'd the Government, and left the Throne *vacant*; thereby there was an *immediate Descent* of the Crown by inherent Birthright to his Daughter, if willing to accept it: I say, what had we to do more, than to recognize and declare her to be *Queen of England*? Indeed, they did join in their said Declaration the Prince her Husband with her: but they seem not to pretend to make either him or her, *King or Queen*; their words are these, *The Lords Spiritual and Temporal, and the Commons assembled at Westminster, do resolve that William and Mary, Prince and Princess of Orange, be, and be declared King and Queen of England, &c.*

Object. But why do they not then declare the Princess as immediate Heir, to be *Queen only*, or at least before the *Prince*?

Sol. This I hope hath been fairly accounted for before, *Consensus tollit Errorem*; especially Consent grounded upon invincible Reasons of State in that Juncture, or rather Confusion of Affairs. And if we look back upon former times, we are not without instances in this particular, not much unlike it.

2. *Edward the 2d* denied himself of his Right, and actually relinquish'd the Government, ('tis not material here upon what Motives) and his *Son*, with the *Father's* liking, and the Advice of the *great Men*, was King of *England* during his *Father's* Life; tho' before he had sworn, *inuito Patre*, he would never accept of the Crown; yet when he doth accept it, he declares he takes it not as the Gift of the People, nor any other way, but as *Primaginius Regis*, & *Hares*.

3. Somewhat like it we read concerning *Richard Duke of York*; he was permitted by the *true Heir* to the Crown, (tho' his own Title to it was upon examination found defective) to possess the Throne, for the honour of the King, and to maintain Peace during his Life: and the true Heir did *cedere de jure suo*, with assurance to enjoy the Crown after the Decease of the King *de facto*.

4. It was indeed enacted 15 *Edw. 2.* that the things which shall be establish'd for the Estate of the King, and of the Realm and People, may be created, moved and established by the King, and by the Assent of the Prelates, Earls, Barons, and Commonalty of the Kingdom. And there is no doubt but this is the proper course in ordinary Cases.

5. But that there is a necessity for a Convention, that is no Parliament, in some extraordinary Cases, to meddle in these high Matters, none, I think, can question. Namely, if we can suppose the *Royal Family* extinct, at least so far, as there is no Heir appears to claim and take the Government, upon the demise of the King. Is there not a plain necessity now to preserve all from Confusion, for the *great Men*, &c. to meet, and to consider where to place the Government, according to Right, or Merit?

6. Again, we may suppose two or more Rivals for the Crown, upon the King's Death, when there can be no Parliament, (that, if in being before, dying with the King) should not the Great Men meet, and prevent the Ruin of the Kingdom by Civil Wars, by acknowledging and assisting the right Heir, as they are bound by their natural Allegiance?

Yea, I may add, If a Pretender, excluded by the Limitations of the Law, should by violence invade the Government; what Remedy, if the People may not meet, especially being invited thereunto, by the next Heir qualified by the Law, to keep out the

As they did
in Rich. 3.
that famous
Case

the Pretender, and admit the lawful Heir to take the Government?

7. That there may be *Limitations* put to the Descent of the Crown, methinks lies not only in the *Nature* of Government, but hath been the declared sense of the Kingdom, (*i. e.* of King or Parliament) upon all occasions, and never denied: And if those Limitations are necessary for the preservation of the Whole, and our very Constitution, as they may be, or are clearly expressed in an *Act* of Parliament; if any one would break thro', and invade the Government, he must be prevented by a Convention, or the *Foundation* of the Government is subverted.

8. Lastly, The Throne being left empty of an Administrator lately in our own Case, and we put into a state of Anarchy, and great Confusion upon the late King's Departure, Did not every Man, that had any sense of our Danger, (and that is, all that were not concern'd in the late methods of our Ruin) Did not they see then a plain necessity to meet together, and apply to the Author of our Deliverance, desiring that he would lay upon him the Administration of the Government, till the Convention should meet, and to give out his *Summons* for a Convention? And was not that Convention regularly, peaceably and freely chosen and assembled? And what did they do, but consider where the *Right* of the Crown now lay, and with the Consent of all Parties, as before is noted, declare WILLIAM and MARY our King and Queen.

9. True, as yet they were no *Parliament*, but as soon as there was a Possessor of the Throne, the Lords and Commons so freely chosen, by the subsequent Consent of the King, of *Themselves* proceed into a *Parliament*; and being so, recognize the King and Queen, and cause *Proclamations* thereof to be made throughout the Kingdom. Which being done, we have a King and Queen *de facto*, and no room left to dispute their Title according to Reason.

10. Give me leave to resume the Matter fair and plain. All saw a necessity that the great Men should meet, (and some perhaps that now scruple) and desire the Prince of Orange to take the Administration of the Government, and summon a Convention; and in that Exigence what could they do more reasonable and wisely? and how could the Prince proceed more regularly and nearer to our Constitution, having the Exercise

of the Government, than by summoning a Convention? Or, how could the People transact the *Election*, to represent them more freely and quietly than they did? And what had the *Convention of Lords and Commons* (so elected) to do, but to consider where the next Title to the Crown lay, and to declare and recognize the present King and Queen, with consent of all parties concern'd; as before was observ'd? by which Act of the People of *England*, they took, and now have, as evident a *Possession* of the Throne, as ever any King of *England* had.

11. I say, now especially, because, since the Declaration of the *Convention*, the Body of the Kingdom in *Parliament*, have solemnly again recognized the present King and Queen; and they have been since acknowledged by the People at large, by Universal *Proclamations* throughout the Kingdom.

Obj. But the Assembly at *Westminster* may be thought but a *Convention* still, and no *Parliament*, because not at first summon'd by the King's Writs.

Ans. However, they truly represent the whole Body of the People, and the Representatives of the Commons, and University of the People, together with the Lords, all concurr'd to the *Proclamations* of the King and Queen, and that's enough certainly to render the *Possession* of the Throne by them undoubted; besides the Solemnities of it at their Coronations, by the usual Methods, and all Formalities of Law.

But let us consider this matter a little nearer.

1. I do not say a *Parliament* can make it self; but methinks 'tis evident enough, that the Persons elected by the People on purpose to be their *Representatives*, in Conjunction with the Lords, whose Right it is to sit in *Parliament*, with the consent of the King sufficiently, express'd should have both the matter and form of a *Parliament*: 'tis true we cannot conceive a proper *Parliament* in *England*, without a King in Being in *Possession*; but the Writs before can reasonably be supposed to have no further Intendence into the being of a *Parliament*, than only for the orderly Proceeding of the *Election*, and signifying the King's Pleasure to have a *Parliament*.

To be short; if we find the Name and Power of a *Parliament* given by the Law to *Conventions*, not chosen by the People; if we find the *Definition* of a *Parliament* given by a Statute, so agree exactly to the present *Parliament*; and lastly,

if we have a *Precedent* in the case, why should we doubt whether the present be a Legal Parliament?

First, That the Name and Power of *Parliament* hath been formerly given by Law to *Conventions* of the great Men, and the Community of the People, without any Election of the People at all, and consequently not chosen upon Writs from the King; this the learned Dr. *Brady* labours much to prove in favour of the Crown before (as he saith) *Parliaments* were settled as now they are. He saith *Colloquium & Parliamentum*, Conference and Parliament, were expressive one of another; and in those great *Conventions*, sometimes only the great Men of the Kingdom, as at *Rummede*, are called a Parliament; sometimes also with them the *Communitas Populi*; but these, he saith, did not include the common sort, much less imply the issuing out of Writs, and thereupon the Peoples electing their Representatives, p. 72. Answ. to Mr. *Petit*.

Whence I argue, If a *Convention* heretofore (without the Election of the People upon Writs from the King) had the Name of a *Parliament*, and concurred with the King to make Laws binding upon the People; certainly now a *Convention* freely chosen by Summons from a Person that had the Administration of the Government in his hand, and was in the place of the King (though the late King had call'd in his Writs, and left the Kingdom, and that Exigence of Affairs could not possibly admit any other Remedy) I say, such a Convention, when allowed by the King, doth much rather deserve the Name, and challenge the Authority of a Parliament.

The Argument receives much strength, if we consider that now the Election of our Representatives, so essential to our Parliaments, is the great fundamental Priviledg of the People; and consequently the King's Writs to that purpose, that we may have frequent Parliaments, is the Peoples Priviledg also; besides the present King cannot be supposed to suffer any thing in his *Prerogative*, who (though in another Capacity) did in effect send out such Writs; and since he took the Crown, hath allow'd the Election upon his own Summons for a Convention, to serve in order to their being a *Parliament*, what can be thought wanting to the making them a *Parliament*? The People have their Priviledg, and the King his *Prerogative*: and while we have the Substance, 'tis vain to complain of the want of

of a mere Formality, impossible to be had, to the Unsettlement of a whole Kingdom.
 Secondly, The Definition of a Parliament agrees well enough with our present Parliament, as we have it in K. James the first.

A Parliament is, where all the whole Body of the Realm, and every particular Member thereof, either in Person, or by Representation (upon their own free Elections) are, by the Laws of this Realm, deemed to be personally present. Wherein we have two Propositions.

1st. That every particular Subject, either in Person (in the House of Peers) or by Representation in the House of Commons, are, by the Laws of this Realm, deemed personally present in Parliament.

2^{dly}. That where the whole of the Realm are thus, either in Person, as Peers, or by their Representatives, upon their own free Elections present, there is a Parliament.

1. So that the Essence of a Parliament seems to consist in two things, with respect to the two Houses: The Presence of the Peers in their own Right; and of the Representatives of the People by Virtue of their Election, and to be entire, without the Consideration of any previous Writs from the King.

2. Indeed we cannot well conceive that a Parliament properly so can be so without a King in being, not for want of Writs to summon, but for want of an occasion, and reason of their being, if the King be the Person with whom they are to parly. *Et caput Principium, Et finis Parliamenti*: But seeing the Peers of the Realm, and the Representatives of the Commons, upon their own free Elections, are assembled, and the King in being, allows, approves, and ratifies their Assembly to be a Parliament by his subsequent Assent, as King, to that manner of Summons, which he, before he was actually King, invited them to; and advises with them, and makes use of them as his Parliament; It is plain to me, that they have the entire Substance of a lawful Parliament; and that the King's Writs in such a case are but a separable Accident; and that we should look upon our selves, and the whole Body of the People, as present there, and acting or consenting to all the Laws made by the King and them.

3. And lastly, we are not without a plain and direct Precedent in the case upon King Charles the second's happy Restauration (as

every one observes) which is, *in terminis*, made the pattern by this King and Parliament in the late *Act*, declaring themselves to be a *Parliament*, though it wanted the previous Writs of Summons; which could not be had.

And though 23 of the *Statutes* made by that *Parliament* were afterwards confirm'd, 13 *Car. 2. c. 7.* yet the rest of the *Acts* made by them have been taken to be of as much force by the Judges, though not so confirm'd: And this of the 12 *Car. 2. r.* is one of them; as all other Laws, made by our Kings, whose Titles have been afterwards question'd, (with the Peoples Concurrence) have been ever held valid.

Thus we have the Publicque Judgment of two *Kings*, and of the Body of the whole *Kingdom* in two *Parliaments*, that such *Writs* of Summons before-hand, are not necessary in all Cases, and in particular in our Case, to the Constitution of a true and Legal *Parliament*: And who have most reason to understand, and to judge, and determine such publick and high Points, concerning the Nature of *Parliaments*, the King and Kingdom assembled together, or Men of a single and private Capacity? How far our Consent and Sense is concern'd in the Determination of those we have chosen, and in some sort trusted with our politick Interest; and in whom the Law lately mention'd, saith, We are deemed to be present, I urge not, but it may be worthy to be considered.

The Words of the *Parliament*, being about to declare the Right of *Richard the 3d.* are these, and I think them very pertinent; *The Parliament is of such Authority, and the People of this Land of such a Nature and Disposition, as Experience teacheth, that Manifestation or Declaration of any Truth, made by the three Estates of this Realm assembled in Parliament, and by Authority of the same, maketh before all other things, most faithful and certain quieting of Mens Minds, and removeth the Occasion of Doubts and seditious Language. Which God grant,*

Arguing from the Possession of the Crown.

I Have now finished the greatest part of my Undertaking; and how I have vindicated the late *Revolution*, and reconciled our present State to our ancient Constitution; as an *Hereditary Monarchy*, and admitting no *Interregnum*, my Reader will be my Judg. As also of what I have said touching *Abdication* and *Vacancy* in the Throne; of the *Convention*, and their just and regular Proceedings; in their Invitation of King *William* and Queen *Mary*, to take upon them the Government of these Kingdoms; and lastly, of the Legality of the *present Parliament*; and thereby obviated or answered the *Objections* made against the present Government. From any, or all of these, as I intended, I submit to his serious Consideration and candid Censure.

2. But if all that I have hitherto said, fail of my end, in giving full satisfaction to such as scruple the taking the new Oaths of Allegiance, to all the Arguments that have been so well enlarged upon by others, I shall only resume that, that hath been often insisted on, taken from the Possession of the present King and Queen, with the easy and just consequence of it.

3. If the Body of the Kingdom, as represented by the Lords and Commons duly chosen, or scattered over the Kingdom by their open, uninterrupted, and general Recognitions and Proclamations, and their Coronations, with all the Methods and Formalities of Law can give, or can own and approve the Possession of the Throne, and declare and manifest *William* and *Mary*, King and Queen (as no body can doubt) they are certainly, and must be acknowledged to be our King and Queen *de facto*.

Now hence it follows.

1. Then we owe them *Obedience* due by Law, for then we are their Subjects. And we cannot conceive of *Sovereignty* without *Authority*, nor of *Subjection* without *Obedience*. This the Statute of *Mon. 7.* plainly supposeth due to the King in being; and consequently, that such an one is not a King in Name only, but in *Dignity* and Power. And the Subject may obey him, fight for him, and consequently take the military Oath, an Oath to be faithful in that highest Act of his Service; and doth

affail him from any Crime in so doing, in Reason, Law and Conscience.

2. Hereupon the learned Lord Coke, and Judge Hales affirm without Hesitancy, That a King *de facto*, and not *de jure*, is within the great and ancient Statute of Treason, 25 Edw. 3.

3. Now if we enquire why Treason may, according to Law, be committed against a King *de facto*? the Reason is obvious, namely, because the Law looks upon him as really our King. As Treason, they say, cannot be committed against a King by Right only, and hath not Possession, which must be upon the like Reason, because the Law doth not regard one out of Possession, and cannot protect us, or administer Justice to us as King of England.

4. Hence it seems to follow, first, If the Subject may be guilty of Treason against the King in being, it implies he owes the Duty that is contrary to Treason, to the same King, and what is that but *Fealty* or Fidelity? that is, a Principle against Treason, a faithful and loyal Mind, keeping Treason out of its Seat, which we know is not so much in our Actions as in the Mind and Imagination. 2dly. If Treason cannot be committed against the King that is out of Possession, as he is not King according to Law, so we cannot be thought to owe him our Allegiance, that is, Obedience according to Law, for he is not King so as to rule or command us, and then there is wanting the very Reason of Duty, or of Fidelity to that Duty.

5. It may not be unworthy our observation, That if any one yet can be so weak or blind, as to imagine, that since the late King's Abdication, the Crown is in Abeyance, and the Right lies somewhere else; even in that case, they say, the Common Law favours the Abeyance, and looks upon his Title to be good, until the Right of the Heir be proved, and the Matter of the Title be decided by Law, and consequently all Duties, in the mean time, are to be paid by the Tenants to the Abeyant, as if he had Right as well as Possession. I need not apply it.

6. However there is nothing in the Law of the Land, or the Word of God, that necessitates the Subject to trouble his Conscience with Scriptures about the Titles of Princes, or beyond the actual Possession and Administration of the Government.

7. For the Word of God, that supposes Christians to be under the present Powers; and strictly enjoins them peaceable and

and unscrupled Submission and Obedience to the *Power*; but this Argument hath been sufficiently enforced by others, even to *Demonstration*.

2. For the *Law of the Land*; this justifies our Obedience to the *present Power*, yea requires it, and punisheth the contrary; and will not endure any Scruples about the *Right*, when the *Possession of the Crown* is once settled; and terminates all Doubts of that kind in an Act of *Parliament*, which is the *publick Judgment and Sense of the Nation*.

Twas said by the Parliament of *Richard the 3d*, after they had cleared his *Title*, as grounded upon the *ancient Laws and laudable Customs of the Realm*, according to the Judgment of all such Persons as were learned in those *Laws and Customs*; they proceed and say, 'Yet nevertheless, forasmuch as it is considered, that the most part of the People is not sufficiently learned in the *aforsaid Laws and Customs*, whereby Truth and Right in this behalf, of likelihood may be had, and not clearly known to all People, and thereupon put in doubt and question; and over this, how that the Court of Parliament is of such Authority, that a Declaration made by the three Estates, and by the Authority of the same, maketh before all other things most faithful and certain quieting of Mens Minds, and removeth the occasion of Doubts and seditious Language; therefore they declare that he was the undoubted King.

Whence 'tis evident, that the Reason of this *Law* supposeth that the Subjects in general are not capable of understanding the *Laws and Customs* upon which the Titles of our *Kings* depend: and that the best Satisfaction that the Generality of the People can possibly have in those high Matters, is the Sense, and Judgment, and Determination of the *Kingdom*, by Act and Authority of Parliament, wherein they should acquiesce for the preventing *Sedition*, so much as in *Language*.

But to be short here, the *Law* allows a King *de facto* the Name, and Dignity, and Authority, and Defence of a King; And doth it not require our *Duty* according to Law? Was't ever known, the King being acknowledged to have the actual Government, that the Subject was excused from *Allegiance*, or an Oath of *Fidelity*, as occasion required it? Yea, If Obedience according to Law, be acknowledged due to the present Government, as it now it seems is generally granted, is not

the Oath of Allegiance at this time required by Law, as well as by the Relation of Subjects, and so made a plain part of our Obedience according to Law?

Yet if the King in Possession be really our King, do not our own Laws return upon us, requiring *Loyalty* and Fealty, forbidding Sedition, and *Scandalum Magnatum*, and all Endeavours to alter the Government? that is, at least by our peaceable and dutiful Carriage to acquiesce in the Work of *Divine Providence*, in our late *Revolution*, and the Acknowledgment of our Subjection due to *William and Mary*, who, as we have heard by the Laws of the Land heretofore made, are our undoubted King and Queen, because in possession of the Government; their Right also is unquestionable by *private Subjects*, being a Point determined according to the ancient Laws and laudable Customs of this Realm; and their *Right* as well as *Possession* openly declared by the highest Authority of the Kingdom, in *Acts* of the present Parliament.

Object. But some are apt to say, This is to prove that the *Sun shines*; who denies that the present King and Queen are such *de facto*, or that we *ought* to obey them?

Sol. 1. This is so far well. But do we obey them without reserve for the late King? Do we acknowledge that the *Laws* of the Land oblige us to give them our Obedience? Or do we mean only, that they have the *Name* of Sovereigns, and a *Power* in their Hands to defend themselves against, and to punish *Disturbers* of their Possession? If it be so, we do not take right Measures of their *Authority*, or of our own Duty according to Law.

2. For they are really King and Queen, by being in *Possession*, and invested by the Laws with *Regal Authority* as well as *Power*; otherwise they could not be within the purview of the *Statutes* of Treason.

3. Consequently all their *Actions* that are *political*, and for the matter agreeable to Law, are as valid, and of as good Authority as the Acts of the most *rightful Kings*.

They have Authority, and do effectually execute, and make Laws, while they are in Possession, as they do protect us, so they administer Justice, dispose of Offices, coin Money, make Peace and War, punish all kind of Offences, as well against the *Subjects* as the *Government*.

And

4. And such Acts of a King *de facto* only, without Right, as concern, and have Influence upon the Kingdom, have ever been allow'd and reputed good and valid, though the Title to the Crown hath been question'd and denied in after-Ages, as we noted before.

5. That very *Parliament* that condemned the Usurpations of *Hen. 4, 5, 6.* and all Acts that had entailed the Crown, contrary to the course of Inheritance, yet add these remarkable Words; *Humbly that all other Acts and Ordinances made in the said Parliament since, been good and sufficient against all other Persons.* Vid. *Dr. Brady, P. 386.*

I would infer hence, that Obedience is due to the present King, &c. in his *Authority*, by Law acknowledged, as well as *Power*; and therefore not only for *Wrath*, but for *Conscience sake*; Conscience, I say, not of their Title, but of their *Authority*, and our own plain Duty (at least for Conscience sake, with respect to the *publick Good*) to take the *Oath of Allegiance*, which is part of our Obedience, it being required by Law, and therefore our Duty.

Obj. Your arguing seems to perswade us only to *Obedience*, which we do not much scruple, in the sense you explicate it. The Swearing to *bear true Allegiance*, is that which troubles us, not knowing well the intended sense or meaning of it.

Sol. The Government hath given us reasonable Satisfaction in this Particular, though not so clear as may be wish'd; the very Title of the Oath, even in this new Law, is the Oath of *Allegiance or Obedience*. Now if Allegiance in the sense of the Law, as explained by the *Law-makers*, be nothing but Obedience; and Obedience in *England*, is to be measured by the Laws; what can Allegiance import more than *Obedience according to Law*? which you say you are willing to yield; and why now should you refuse to add this Sign and Security of such your Obedience, by taking your Oath to do so?

2. Moreover, you find the Government insists not upon the Word *Allegiance*, nor intends any strange or obscure Obligation upon us by it; for in the *Declaration*, they require of *Quakers*, who refuse to swear, they express [Faith and Allegiance] by those plainer Words, *I will be true and faithful to King William and Queen Mary.*

3. And as one lately hath very well observed, the *Parliament* have avoided all occasion of Offence in wording this Oath that might conflict with the Security of the Government; for by omitting the assertory part of the former, 'tis evident they do not require us by this Oath to assert the Title, but to secure the Possession and Peace of the Crown, in King *William* and Queen *Mary*, by our Obedience according to Law.

Indeed we may perceive in the whole Proceeding of our late wonderful Revolution, so much Sweetness, Tenderness, and Condescension to the Prejudices that the former State of things might leave in us, (both with respect to our late King, and our own Obligations) as if the Government had industriously studied to avoid all occasion of Offence, as much as the nature of the Change suffer'd to be possible.

I have, I think, noted before, that the *Convention* did not depose the late King; did not declare the Crown forfeited; did not require him to make a *Resignation* of it; and tho they justly charge him with many intolerable Grievances; yet they did not call the King to an Account for them. Nay, they did not so much as declare that the King is accountable; so that the Minds of such as boast of *excessive Loyalty*, have ease as to all these things, that bear so hard a Contradiction to their Principles; and as for our selves, we have noted some Kindness and Condescension with respect to the Oath required; thereby it is neither required, that we should *abjure* the Title of the late King, nor assert the Title of the present. God forbid therefore, that there should be left any Prejudice in us from the hard Proceeding of the Government in either kind: if it should, it is plainly as false in its ground, as 'tis like to be evil in its Consequence, especially if we stiffen our *Disloyalty* with the Continuance of a scandalous Impeachment of our Rulers and Legislators, for Severity intended against the *Church*, and a designed Alteration or Change of the ancient Constitution of this *Hereditary Monarchy*: the one I hope is as true as the other.

Obj. The Statute of *Rev.* so much depended on, was made by a King that had no Title to the Crown himself.

Ans. What then? Doth it follow that the Statute is not of force? Upon that ground we must blot out a great part of our *Statute-Book*, which is full of Laws made by such Kings; and the

the best of our Laws have no force, if the Observation hath any truth, that the worst Kings made the best Laws.

Object. But 'tis a Law mischievous to the Right of our Kings.

Ans. It is much this Mischief hath not been discovered by our former Kings or Parliaments; that so mischievous a Law should continue through so long a tract of time un repealed: his confels'd, it may be inconvenient, and prejudice the Interest of a King *de jure*; but we ought in reason to set this against it, that it is a Law at all times convenient, and serving the Ease, Quiet and Safety of the Kingdom, for whose sake Kings themselves are: 'tis hereupon that the Lord Bacon tells us, *that the Spirit of this Law was wonderfully pious and noble: upon this ground, as one saith well, because they who had no hand in the Sin, should bear no share in the Punishment.*

And the Lord Bacon adds, *That this wanted not Prudence and deep Foresight; for it did the better take away occasion for the People to busy themselves to pry into the King's Titles; for that however it fell, their Safety was already provided for.* And as the late Author, that cites my Lord Bacon for these Words, adds very well, *The meanest Capacity will not be wanting for a Rule of that Subjection, which every Soul owes to the higher Powers: but if the Subject ought first to satisfy himself, touching the Right of his Prince (especially in such a time of contest as there was many Years betwixt York and Lancaster) certainly every Soul could hardly be so well satisfied, as to be subject for Conscience sake.*

C H A P. VIII.

Whether a King can make Laws, limiting the Crown.

Obj. **T**Hough it be acknowledged that a King *de facto* hath Power to make other Laws, *viz.* Laws for Peace and Justice, yet it is a Doubt whether a King that hath no right to the Crown, can make Laws for limiting the Succession of the Crown, as is now to be done.

Answ. It is confess'd, that when it was pleaded against the Title and Claim of the Duke of York, that there were divers Entails made to the Heirs Males of Hen. 4. It was answered, There had been none made by any Parliament heretofore as it is surmised, but only in the seventh Year of K. Henry the Fourth.— But that Act taketh no place against him that is right Inheritor, &c. Howbeit all other Acts made in the said Parliament since, have been and are sufficient against all other Persons. Upon this Law, the foresaid Distinction seems grounded; but I think very weakly, for these Reasons:

1. Because this very Law mentions *Henry the Fourth*, with the Addition and Title of King, without any Diminution, as appears in the Words cited.

2. The ground upon which that *Entail* was declared *Null*, was not a want of Power in King and Parliament, to make a Law about the Succession; but as they declare, in the Dukes first Answer, That no Oath, being the Law of Man, ought to be performed, when *the same is against the Truth, and the Law of God*: implying, as afterwards they speak out, it was a Law, though of Man, it faileth not for want of Authority, being made by a King *de facto* with his Parliament; but the reason why it could not oblige, was taken from the matter of it, it diverted the Descent and Succession of the Crown, according to *Right of Inheritance*.

3. The Argument that a King *de facto* hath no Power to make Laws to limit the Crown, because he is supposed to have no Right to the Crown himself: I say, this seems not cogent. 'Tis true, 'tis supposed he had no Right at first, and his Usurpation cannot be thought to create any just Title to the Crown, yet

yet when he hath it, hath not he Right, or rather Authority in Law, by his Possession, to use it? that is, to make Laws. If not, then all the Laws he makes, even those for Peace and Justice, are void, for want of *Authority*, which this very Law against the *Entail* of *Hen. 4.* denies.

I grant, all *positive* Laws made by a rightful King, or by an Usurper, are equally voidable, *i. e.* repealable. But if we speak of such Laws as are void of *themselves*, it seems to me, they must be so, one of these two ways; Either for want of due *Authority* to make Laws; Or, with respect to something in the *Matter* of such Laws as is destructive of them.

For the first way, 'tis granted me, that a King *de facto* only, hath Authority enough to make Laws generally speaking: if his Laws therefore be not of force to limit the *Succession*, 'tis for another reason mention'd before, taken from that *special Matter* of the Right of *Inheritance*, which, it is thought, cannot be infringed by any Law of Man.

Hence 'tis still a doubt with me, whether a King *de facto* hath not an *equal* Power with the most *rightful* King to make any Law, even touching the Crown, as any thing else.

Suppose a King *de facto*, after some Contests about the *Succession*, settle the Crown as it ought to go, Is not such a Law a good Law? Wherein can it fail? neither in *Matter* nor *Authority*. Again, the most *rightful* King, in and by his Law, limits the *Crown*, as it ought not to be; Is that Law a good Law? No Power can make a Law that is *malum in se*, to be *bonum*. As Hen. 8. did.

I confess, I see no difference in the *Legislative* Power of a King *regnant*, whether with or without Right; especially, seeing the *Parliament*, which is the Body of the Kingdom, choose the *Matter*, and give *Authority* to the Laws, as well as the King.

But this Nicety need not trouble us under their present *Majesties*, whose Title to the Crown, I hope, is unquestionable as well as their Possession of it. Besides, there is no room for this Objection among all our Scruples about the *Oath* of Allegiance; for, in our private Capacity, we are not to answer for Errors in Government. If the *Succession* can be supposed to be limited in any Point amiss, how can we help it? What's that to our Duty? how are we concerned? The Law doth not re-

quire us to assert or *swear* to the Act of settling the Crown for the future, it requires only our Obedience to our present gracious King and Queen; and we do our Duty, if we look no further.

C H A P. IX.

The Honour of the Church of England, no just Objection against our taking the new Oath.

Obj. I Have heard it offer'd by some, that tho it be lawful to submit to the present *Government*, and to take the new Oath of *Allegiance*, yet by our doing it, the *Church of England* suffers in her *Honour*, and her *distinguishing Character of Loyalty*.

Sol. I have some Reason to hope, that with several Persons, not perfectly reconciled or satisfied, this is the last Objection that remains unanswered. I shall therefore briefly, with all the Strength I have at present, set my self to remove it, and so conclude.

1. I confess, *Loyalty* hath been reckoned the Character of the Church of *England*, and in a great measure, very *deserv'dly*: but if we mean such Loyalty as doth distinguish her from all other Churches of Christians in the World, it may be an Argument of Singularity, and Reflection upon all other *Protestant Churches*, (as well as *Papish*) Principles and Practices, as some lately have made manifest demonstration. And how *honourable* or landable that is, I determine not, but it may be considered.

2. I perceive the Movers of this Objection do not say, that 'tis *unlawful* to take the new Oath: and indeed, that is granted in the nature of the Objection; for if the Oath be refused only, because 'tis dishonourable to take it, 'tis supposed to be in it self *lawful*, tho not expedient: And indeed, the Argument would have force enough, if there were not some *heavier* Thing than *Honour* to be put into the other Scale.

3. And thus the present Argument is not directly *Matter of Conscience*, but of *Prudence*: For the Matter *in genere*, and in its first Consideration, is granted to be indifferent; and 'tis
to

to be determined to be good or evil by the Addition of something to it, in our special and secondary Consideration. Now here you lay Honour and Reputation in the Scale, and this hath its Weight; but if we put Necessity against Honour and Reputation, the Weight of these is inconsiderable; and what is the Consequence? Why, that which we thought was not to be done, because it was dishonourable, we see it must be done, because 'tis necessary: This is the Law of Prudence; and Expediency changeth sides: that which was expedient not to be done, for the sake of Reputation; 'tis now expedient it should be done, when the Necessity of it appears with its greater Weight.

4. You already perceive how easily this applies it self to the Case in hand, admitting something of Dishonour may in general, and *prima facie*, attend the Action; for the very grant-hog to be an indifferent thing in it self, whether I take this Oath or not, plainly determines the Case, and puts an end to the Controversy.

5. For I boldly and peremptorily presounce, that if it be indifferent, it hath such Additions and Circumstances, as cannot but make it an indispensable Duty, *Rebus sic stantibus*; from the Argument or Ground of Necessity, viz. both Precepti & Medii.

6. First, There is a necessity of the Precept or Law that makes it to be our Duty to take this Oath, which is but the Security of our Allegiance: 'tis required by the Nature of our Constitution; and immemorial Custom, which is our Common Law; 'tis required from the Relation betwixt Prince and People, to secure each other by their respective Oaths; 'tis required by virtue of the Statute of *Blac.* whereby we are to acknowledge the King regnant, to whom alone we owe Allegiance, and must swear it. And lastly, 'Tis expressly required in the Laws of our own making by our Representatives in the present Parliament; in and by which Parliament the King and Queen have equally sworn and plighted their Truth to us. Whence Protection and Allegiance are both the natural and legal Results of the Relation betwixt King and Subject, which every Titles do offer a fortiori port so much.

7. Nor is the taking this Oath necessary only by the Law of Nature, and by the Common Law of the Land, and Acts of Parliament, but by the Law of God. If we should grant it to be perfectly indifferent without it, yet we must grant, that

it be determined by the *Word of God*, it thereby becomes necessary. Now I should think, that to obey the *Powers in Being*, is as clearly commanded by the Law of God in the *Holy Scriptures*, as by any other Law whatsoever: And that we cannot, or do not obey the Powers in *being*, if we refuse to take the Oath; which, we say, is in it self indifferent, when expressly required by the *Laws of the Land*.

8. I think it is the Sense, not only of the Church of *England*, but of all good Christians, that the Word of God makes it our Duty to obey the Government in all *indifferent* things made necessary by *our own Laws*: And that we are bound to such Obedience, not only for *Wrath*, but *Conscience sake*: Conscience towards God, his Ordinance, and Command: let us not misjudg it for our Honour or Reputation, to change our boasted *Loyalty* into *Disobedience*, which is scarce to be avoided without *obeying* the Laws of God and Man, and taking the *Oath*.

Necessitas
Medii.

Secondly, But were there no other Law requiring us to take this Oath, Doth not the necessity of it, as it is a *Means*, make it our Duty? What if Reputation weigh something with us, doth not the Danger of the *Publick*, continued by our *Stiffness*, weigh more? Do we talk of Honour, when the *Commonwealth* lies at stake? Is it comely for a *Souldier* to be playing with a Feather in his Cap, when *Hannibal* is at the Gates?

1. Pardon me, if *Zeal hath eaten me up*, and I cannot contain: *O Jerusalem, for my Brethren and Companions Sakes, I will now say, Peace be within thee, yea, because of the House of the Lord our God I will seek to do thee good.*

2. Who considers how much is owing to piety and strangeness to the Government, for the *Hazards and Blood of Ireland and Scotland* already? Who weighs the further Consequences of it both at home and abroad? Where is our *Compassion* to our *Protestant Brethren*, our Concern for the Reformation, our Charity to the *Kingdom*, our Justice to our *Protestors*, our Kindness to our Friend, our Gratitude to our *Deliverer from Popery and Tyranny*? These are substantial and weighty Things, And what are the *Colours* of a pretended Reputation in comparison of these?

3. What do we mean, upon a point of Honour to throw a *Glove* to the Government? Is it reasonable or fit for us to provoke

voke the King to a quarrel, who hath so many Enemies already, and must stake three Kingdoms to our little Reputation? Yea the Interest of the Protestant World too, of which he is made the Protector?

4. Is it not Satisfaction enough for you, that you have plaid the Men, and stood it out as long as there was the least hopes of serving the Interest of the late King, and so long vindicated your Loyalty to him? Is it not now become morally impossible he should ever return but by the Assistance of the French King? that is, without inflaming us openly to the *Antichristian Powers* (of which he is the Head), under a haughty, cruel, and most barbarous Conqueror.

5. Besides, how unaccountable are Principles, that engage a Man against his own, as well as the publick Interest? as if a Man were bound to oppose and fight with himself and all about him: certainly this is a miserable strait, and such as one cannot imagine the wise and good Providence of God should bring as into.

6. By disobeying the Law, and our Distance with the Government, we continue a Breach, at which a common Destruction may enter; then we know we are lost in the common Calamity. If God in Mercy prevent that, and preserve us with wonder, against our own *Averseness*, as he hath done, then there is yet a Breach betwixt the Government and us; If we do not destroy the Publick and our selves that way, yet we may destroy our selves, when we might help it.

A man may be *Eelo de se*, by destroying himself by our *Dr. Donne*.
 'Law; and *Fur de se*, by depriving and stealing himself from him, to whom his *Service is due*, by the Imperial Law; and
 'Proditor de se, by the Law of Nature, if he descend from the Dignity of Humanity, and submit to the danger which he might avoid. *I speak as to wise Men; judg ye what I say.*

7. 'Tis a plain thing I am about to speak, which, if duly pondered, must needs put an end to the whole Controversy; at least I think so; 'Tis this;

None can be ignorant that the late King hath put himself into that condition, that the French King is now actually endeavouring to serve himself of him, for the Conquest of these Kingdoms; he hath put himself absolutely into the *Monsieurs* Power; he truckles under him in the *Irish Commissions*; he hath
 either:

either sold his Dominions to that King, or so delivered up his Interest in them to his Management, that 'tis a piece of Madness to imagine but that the *French* will reap the Advantage of any Success God may suffer to be obtained against us. Perhaps we may think the poor King *James* was forced to it; but I know you will say, you had no hand in that force, and you could not help it; and is not the thing *de facto* so? Is it any thing to you by what means, or upon what Motives this came to pass? But it being certainly so, you cannot now think but that, seeing the State of things is such, your Allegiance to King *James* is ceased; unless you owe it also to the King of *France*, which God forbid; for while you continue to discountenance the Government, you cannot do more to further the Designs and Methods of our Ruin.

8. The Apostle makes Expediency the Rule of our Practice, in things indifferent; so that some things are to be done, or not to be done, because expedient, or not expedient; upon which this Objection is urg'd. Now if it be indifferent in it self to take or refuse the Oath, I hope what hath been said is enought to satisfy us where the Expediency lies. All things are not expedient; Why? Because all things edify not; much more if they ruine and destroy. It is something, *Non promouent publicam Ecclesie bonum*, if they do not promote the publick Good of the Church; much more *si magis destruant*, if they tend to its Destruction, as Authors gloss upon the Text.

9. One would think this Consideration might fully conuince us that our Obligation to the present King, &c. is widely different from that which lay upon the People during *Oliver's* Usurpation; they had reason to refuse, or at least to suspend the Recognition of a Tyrant, whose Government was Arbitrary, and was never owned by the People in a Free Parliament; who never took upon him the name of King, the proper Title of our Sovereign in all our Laws; under whose Violence and great Oppression the Kingdom in general groaned for Deliverance in the return of their *rightful King*; and might laudably hazard their Lives and Estates, if there was any hopes; the Accomplishment whereof by the wonderful Providence in its due time, was happily effected in the Restauration of King *Charles* the second.

Oliver's
Usurpation
answers not
our Case.

But what is our case now? is it not quite contrary? We do acknowledge we are now rescued even from Destruction as well as Oppression, And what can we look for upon a new Change but a Scene of Blood, the Loss of all our Civil and Ecclesiastical Liberties, under French and Papish Slavery? What can we hope for, if the Lion bereft of his *Whelps*, thirsting after Revenge, be let loose upon us? Will not his Rod that smattered before, be turned into a *Scorpion*, and the latter end of his Tyranny be worse than the beginning?

10. Blessed be God, there is an *unclean Spirit* ejected, and our *House is swept and garnished*; Is his Return to be courted, or indeed to be hazarded? If he should re-enter, will he not *pester us* with more and worse Devils if possible; when in vain and too late, perhaps we may wish we had never encouraged or occasioned our renewed and aggravated Misery. It highly concerns us to do what we can to prevent it; and I see no other way left us to shew our Apprehension of the danger, but by comforting the King, who, under God, hath dispos- sess'd us; and who only, under Heaven, is the visible Instru- ment of our Preservation from that *last Estate* (to use our Sa- viour's Words) *this wither, and that flourisheth*; which I hope we are yet sensible was bad enough; and here we can do this, without assuring him of our gratitude and cheerful Allegiance and Fidelity, by taking the Oath. I cannot see, at least I doubt not but enough hath been said to demonstrate the *impossibility* of our continuing to refuse it, and consequently upon that Argument; a Necessity of taking it; notwithstanding the Ob- jection of the *Reputation* of the Church of England for her singular Loyalty, since it is signed for her by all her Members. To conclude; I need not mind you, since the three Estates in *Parliament*, with the Generality both of the Gentry and Clergy throughout the Kingdom, have left you (perhaps three or four in a County; take one County with another) that yet stand out; I say, I need not mind these very few in comparison; how silly they took to themselves the Name of the Church of England; or how likely a thing it is for them, by scrupling the Oath, to preserve her Reputation of Loyalty in their own sense. Let the time past suffice, that they have endeavoured it so long as there was any hopes to do it; but now if the case be plainly *desperate*, 'tis time for them, upon all

all the Arguments, to many worthy Men as have laboured in Print for their Satisfaction, to cry Quarter, and to yield to the prevailing Power; I mean to come in and submit, and give the required Security thereof, by taking the Oath of *Allegiance* to King *WILLIAM* and Queen *MARY*, whom God long preserve and prosper!

APPENDIX.

The Objection from the Word Allegiance considered.

After I had put an end to my former Discourse, I heard of the following Objection. *Object.* It is said, that *Allegiance* being the Word in the new, as well as in the Old Oath; it seems, it ought to be understood in the same Latitude and Sense in both: Then how can we safely swear *Allegiance* to the present King and Queen in the same sense, in which we have sworn *Allegiance* to the former King, while the former King is alive?

Ans. I hear this is the Scruple of some ingenuous Persons; for whose sake I shall accommodate my Answer to their own Principles, as near as I can: first, by shewing, that those two Oaths, though both are called Oaths of *Allegiance*, yet they are not of the same Latitude in the matter of them. Secondly, that though in a great measure, they are admitted to have the same sense; and though in that sense in which we have sworn *Allegiance* to the former King, we are required to swear *Allegiance* to the present King and Queen, yet we safely and honestly do it.

1. For the first. It is plain, that the former Oath, though it be called the Oath of *Allegiance*, yet it hath more in the matter

matter of it, than can be imported in the Word *Allegiance*; it hath two manifest parts of a different Nature; the first acknowledgeth the King's just Title to the Crown, as rightful King; and is found in the form of an *Affertory Oath*.

The other is as plainly *promissory*; *I will bear Faith and true Allegiance*, &c. Now though with respect to this *promissory* part of the old Oath, we should grant, that by the new Oath we are to swear in the same words, and in the same sense; yet 'tis more than evident, that these Words cannot be intended to *assert* any thing about the Title of the Crown; and in all likelihood, the *Affertory* part of the former Oath was left out on purpose in the new, to avoid matter of Scruple or Offence.

Yet 'tis confess'd, that Argument suffers but little in its Strength, if both these Oaths agree, or are the same in any substantial matter, while Men doubt that the former Oath doth oblige them to bear *Allegiance* to King *James*, in the same sense in which we are required to take the new one. It behoves me therefore now to prove the second thing proposed, *That though Allegiance have the same sense and meaning in both, and we have before sworn it to King James in that sense, yet we may safely and honestly swear to bear Faith and true Allegiance to King William and Queen Mary*.

Objeſt. The *Objection*, in short is this, If *Allegiance* sworn to King *James* be due to him by virtue of our Oath, it cannot be due to King *William* and Queen *Mary* in the same sense in which it is due to King *James*.

Answer. The Answer is as short; for if *Allegiance* be due to King *William* and Queen *Mary*, in the same sense that we swore to King *James*; then 'tis not due to King *James*, tho we so swore: For our former Oath cannot oblige us to King *James*, to the injury of King *William* and Queen *Mary*, it would then be a Bond of Iniquity.

We see the *Objection* and Answer stand both upon the same ground, namely, That Obedience or *Allegiance* cannot be due to two Kings in the same sense at once. Therefore if I prove that *Allegiance* is due to the present King and Queen, it must be yielded, that our former Oath to King *James* cannot oblige us to pay such *Allegiance* to him.

My Argument is this; Allegiance is due to the *Supreme Power in being*, therefore it cannot be due in the same sense to any other; because the same Allegiance cannot be due to two Kings at once: but King *William, &c.* are the *Supreme Power in Being*.

To this, what can be replied, but either, that King *William* and Queen *Mary* are not the *Supreme Power in Being*, against all sense; or, that *Allegiance* is not due to the *Supreme Power in being*, against all kind of Law, as I shall shew presently.

Object. But may it not be supposed, that there may be a King *de jure*, that is not so *de facto*? And is there no *Allegiance* due to such a King, especially if we have sworn it to him?

Ans. But was he not King *de facto*, as well as *de jure*, when we swore Allegiance to him? Was that Oath ever taken, but to the King, and under that very consideration, as *actually* our King? We suppose a King *de jure*, but what's that? He hath Right to be King: And doth not that very thing prove that he is *not* King, as he hath Right to be? And consequently he hath Right to our *Allegiance* no otherwise, but as he hath Right to be King, and dependently upon it? that is, *remotely*, and upon the supposition, that he obtain his Right, and be *actually* King again, as he was when we first swore Allegiance to him.

Here the Rule seems to have place; [*Rebus sic stantibus*] we owe Allegiance to the King while he is *actually* so: if he ceases to be so, we do not owe him that Allegiance that is due to a King in *Possession*: if he have a Right to be King, we do not therefore owe him actual Obedience, until he recover and enjoy, or have that Right indeed, upon which depends our Obedience. Our Oath at first included that known Condition, *Sic res in eodem statu permanferint.*

Object. But we have sworn to King *James*, and who can absolve us? or how can our *Obligation* to him cease, or be dissolved?

Ans. The strict Question here, is not, whether that *Obligation* be *suspended* only, or wholly taken off? that is, whether there remains no *Obligation* upon us to King *James*: but whether the *Obligation* be such as prevents or hinders our lawful swearing Allegiance to the Powers in Being? There is a Duty owing to the present Government, which must be first allowed, and then the supposed *Obligation* to the late King, what,

ever it be, must be such as may consist with that Duty.

I need not here mention how many Ways our Allegiance to the late King is ceas'd; From the removal of the *Object*, he ceasing to be King; From the Rule of all Allegiance, the present *Laws*; the Reason and End of Government, or the like. 'Tis enough to my present purpose to prove that *Allegiance is due*, and consequently we may lawfully take the new Oath to our present King and Queen. And therefore no consideration of any former Oath should make us deny or delay the performance of our Duty to them.

This is the Point I am come to prove; which seems to me very easy to be done, From the Law of Nature; the Law of holy Scripture; and the Laws of the Land.

First, Obedience to our Parents, civil as well as natural, is a Law of Nature. Our actual Governours are our nursing Fathers and nursing Mothers: this is of moral and eternal Reason; and the Obligation thence upon us, is antecedent to any Obligation, that we can be supposed to contract by our Oath to any particular Person contrary thereunto; which, as our Law saith, is but of human Provision.

Our Law-Books ground our Allegiance upon the same Reason; *Procedo trahit Subjectionem*: Allegiance is founded in Protection upon moral Arguments of Justice and Gratitude. And the Casuist affirms, "Allegiance is intrinsic, and so essential a Duty, and as it were, fundamental to the Relation of a Subject, (*qua talis*) as that the very Name of a Subject doth alter a sort impoſſit. The Consequence is, that Allegiance is not due to one, that hath not Possession, and therefore hath not power to protect us, whatsoever his Right may be; but it is due to the present King, &c. that doth in fact protect us without any Consideration of his Right to the Crown.

2. Allegiance (saith the Bishop again) is a Duty that every Subject, by the Law of Nature, owes to his Country, and consequently to the Supreme Power thereof; that is, to his Country as the End, to the King as the Means of that End.

Now the End being more noble than the Means, for which the Means hath both its Use and very Being, as such, in that which is ordained to be a means of Preservation of our Country, change its Nature and proper Intention, and becomes a

1. Nature.

Calv. Cast.

Bp Sanderson.

846. p. 109

Lect. 5. de Means and Instrument of its Destruction, we cannot, in the Reg-
leg. S. 19. son of things, be bound any longer to use it. For, as he saith
in another place, Whatsoever is done for any End, is so far
to be done, as it doth seem necessary and profitable for that
End.

Now 'tis not denied, but that the Government in the hands
of King James was used, not for the Preservation of our Coun-
try, but its Destruction; and contrary to the Ends of all Go-
vernment: Yea, such as pretend some Allegiance yet due to
him, do they not rather fear than hope for his Return to the
Government? which, in all moral Assurance, they know would
be more pernicious to us than it was before he left us.

Besides, we are now under Powers that do actually and hap-
pily serve the Ends of Government. We must hence conclude;
that by virtue of our Allegiance due to our Country, which is
of first and greater Consideration, our Allegiance to our late
King, as contrary, or inconsistent therewith, is dissolved, and
become due to the present Government.

3. Further; By the Law of Nature, *Salus Populi* is both the
supreme and the first Law in Government, and the Scope and
End of all other Laws, and of Government it self. Now how
this can be preserved by our Allegiance to any other but the
Government in being, is, I think, unintelligible.

Perhaps some are yet to learn, *what that meaneth, I will have
Mercy and not Sacrifice*: What Sacrifice? Why, God's own
Service: What Mercy? Why, to save Life; either of an Ox
fallen into a Ditch, or a sick Man. Now what was that Ser-
vice of God that must yield to that Mercy to Man and Beast?
Was it the Observation of the Sabbath? And what was that
but, as it were, an Oath of Allegiance to God? It is, saith
God, *a Sign between me and you*; yet this Oath binds not, this
Testimony is invalid, this Service is no Duty, when it comes
in competition with Charity or Mercy to Man or Beast. The
Reason is, There is a prior and eternal Obligation to those mo-
ral Duties.

Is not then the Service of the King, though sworn in the Oath
of Allegiance (that Sign or Testimony between King and Sub-
ject) is not thus discharged, or dispens'd with, when *Salus Populi*,
the Preservation of three Kingdoms, is concern'd and in danger;
and the more by the Colour of our pretended Allegiance?

I think there is much weight in the words of a late Author :
 "I can be sure, saith he, of nothing, if I am out in this No-
 tion, That no Oath can bind any longer, than the Obligation
 thereof is consistent and reconcileable with *Salus Populi*, the
 " Welfare (the Spiritual and Temporal Welfare) of the Peo-
 " ple, which is the sole *End* of all Government.

And seeing the Safety and Preservation of the Community
 depends upon the Promise of Allegiance to the supreme Gover-
 nor for the time being; and the Subjects are under a plain ne-
 cessity, either to hazard or ruine the Publick, or to transfer
 their Allegiance; they may certainly do it lawfully; yea, are
 bound to do it by the Law of Laws; *Salus Populi Suprema*
Lex.

Secondly, So much briefly for the Law of Nature. Now do not ^{2. Scripture.}
 the *Holy Scriptures* warrant the same? Do we find any, either
 in the old or new Testament, that scrupled, or were question'd
 for their Obedience to the *Powers in being*? I think the present
 Reverend and Learned Dean of Sarum, Dr. *Pearse*, hath a
 Sermon in print, to prove Submission to Governments, a *Fundamental*
 of the Christian Religion. I am sure our Saviour,
 and more largely St. *Paul*, require our Obedience to the Pow-
 ers that are, without any Consideration of their Title; mere-
 ly, because of their Authority and Administrations; in
 which the Apostle expressly founds the Duty of *Subjection*
 for *Conscience sake*. The Arguments to this purpose, lately
 urged from *Romans* 13. by several worthy Authors, I despair
 of ever seeing tolerably answered; to whom I refer my Reader:
 only let us meditate those notable Counsels of God by the Pro-
 phet, *Seek the Peace of the City*, (*Babylon*, where the People were
 Captives to their Tyrannical Enemies) *and pray unto the Lord*
for it; for in the Peace thereof, ye shall have Peace. Jer. 29. 7.

Thirdly, Lastly, Is there not sufficient in our own Laws to ^{3. Our}
 justify our *Allegiance* to a King *regnant*, without our being satis- ^{Laws.}
 fied touching his Title? Have we not the Authority of for-
 mer Ages? Is not our *Statute-Book* a clear Testimony of it?
 In what time was it ever denied? Who was ever captured or
 punished for granting it? Are not all such Kings who reigned
 without Right, recorded as Kings of *England*, and their Laws

as puthetick and obligatory? Is it not evident then, that Allegiance due to a *King regnant* (with right or without, none is agreeable to the State and Principles of this Monarchy, and founded in the Usage and Common Law of *England*.)

But that which methinks should put the matter beyond Question, is the known and often mentioned Stat. of 11 Hen. 7. i. grounded, as it speaks the sense of the Nation, upon Reason, Law, and good Conscience. And though the worthy *Author of Considerations* and others, have with a great deal of strength, argued hence to satisfy the Scruples of our Brethren, and it cannot be expected that I should add any thing very considerable; yet I shall very briefly observe a few things for our purpose from it.

1. 'Tis thereby acknowledged, that a King *de facto* hath the Name and Stile of a King of *England*.

2. We are so recognize such a one as our *Sovereign Lord*.

3. That Allegiance is due to such a King from all his Subjects.

4. That by reason of the same Allegiance, they are bound to serve him, even in his Wars.

5. That they are never hereafter to be question'd (tho the lawful King should recover his Right) for so doing their true Duty and Service of Allegiance, as the Words are.

6. That War made against such a King by his Subjects, is Rebellion. All these things are plain in the Letter of that Law, which hath continued unrepealed or unquestion'd for above two hundred Years; and consequently so long hath been the approved sense of the whole Nation, *That Allegiance and true and faithful Service is due to our Sovereign Lord for the time being, whatever his Title be.*

Hence it follows, that in the sense of the Law, a King *de jure* only, is not King. The Statute saith, the King for the *time being*; and seeing we can have but one King, he that hath only right to be King, is not King *indeed*, or for the *time being*. Hereupon suppose the great Lawyers inform us, that the King *de jure* only is not within the Purview of the Statute of Treason; is not, as they say, *Suzerain to Ray*.

Consequently, if Treason cannot be committed against a King *de jure*, whilst he is out of Possession, Allegiance cannot be due to him: which is a Duty we owe to the King as our *Sovereign*.

veragin